

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

**Before Shri Rajpal Yadav, Vice-President
and Shri Manish Borad, Accountant Member**

I.T.A. No.513/Kol/2020
Assessment Year: 2012-13

Orbit Dealmark (P) Ltd.....Appellant

Marcantile Building, 3rd Floor,
9, Lal Bazar Street,
Kolkata-1.

[PAN: AABCO3990M]

vs.

ITO, Ward-6(3), KolkataRespondent

Appearances by:

Shri Saumitra Choudhury & Smt. Saswati Mitra Dutta, Advocate appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 19, 2022

Date of pronouncing the order : April 22, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to assessment year 2012-13 is directed against the order of the Id. Commissioner of Income Tax-2, Kolkata [hereinafter referred to as 'CIT(A)'] dated 13.05.2016 is arising out of the order u/s 143(3) of the Act dated 15.03.2015 passed by ITO, Ward-6(3), Kolkata.

2. The Registry has informed that this appeal is time barred by 1535 days. On going through the condonation application along with the affidavit, and after hearing both the parties, we find that this delay is accountable for three reasons. Firstly, Sri Naresh Kumar Chhaparia, Director of M/s Orbit Delmark Pvt. Ltd. was suffering from lungs infection and diabetic and other oldage ailments, secondly the assessee was not advised properly by the legal consultant who has claimed to have forgotten about the said order and has not taken further process and thirdly, on account of lockdown in the State due to outbreak of Covid-19. We, therefore, in view of the reasons stated in the condonation application and also the extension of limitation period by Hon'ble Supreme Court in *Suo Moto* Writ

Petition (Civil) No.3 of 2020 dated 8th March, 2021, condone the delay in filing this appeal and admit the same for adjudication.

3. At the outset, the Id. Counsel for the assessee submitted that the issue raised on merit for the addition made u/s 68 of the Act at Rs.2,04,80,000/- and disallowance u/s 14A of the Act at Rs.99,615/- have not been decided by Id. CIT(A) and thus deserves to be restored back to the Id. CIT(A) for adjudication.

4. Per contra, the Id. Departmental Representatives submitted that the Id. CIT(A) has dismissed the assessee's appeal because the assessee has withdrawn all the grounds of appeal filed before the Id. CIT(A).

5. We have heard the rival contentions and perused the records placed before us. We find that the assessment u/s 143(3) of the Act was completed in the case of assessee on 15.03.2015 and against the loss declared in the income tax return of Rs.6270/-, addition was made by the Assessing Officer for unexplained cash credit u/s 68 of the Act at Rs.2,04,80,000/- and disallowance u/s 14A of the Act at Rs.99,615/-. Thereafter, the assessee filed an appeal before the Id. CIT(A) on 22.04.2015 raising some grounds of appeal. The grounds mentioned in the impugned order are different from the grounds attached to Form no.35. In the grounds reproduced by the Id. CIT(A) in the impugned order, no grounds in merits u/s 68 and u/s 14A of the Act are appearing whereas in the grounds attached in Form 35 placed on record, we find that the assessee has raised nine grounds including the grounds raised on merits for addition of Rs.2,04,80,000/- u/s 68 of the Act Rs.99,615/- u/s 14A of the Act. The Id. CIT(A) has not adjudicated any of the issues on merits. The Id. Departmental Representative failed to controvert this fact that the grounds raised on merits by the assessee remained adjudicated by the Id. CIT(A).

6. We, therefore under the given facts and circumstances of the case, in the larger interest of justice and being fair to both the parties, are of the considered view that all the issues raised before us, in the instant appeal needs to be restored to the file of the Id. CIT(A) for adjudicating the issues and pass a speaking order on grounds raised before us,

including the issue of addition u/s 68 of the Act and disallowance u/s 14A of the Act. Needless to mention that the assessee should be provided a reasonable and proper opportunity of being heard and to place relevant material on record in support of the grounds raised by it.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 22nd April, 2022.

Sd/-
[Rajpal Yadav]
Vice-President

Sd/-
[Manish Borad]
Accountant Member

Dated: 22.04.2022.

Copy of the order forwarded to:

1. Orbit Dealmark (P) Ltd
2. ITO, Ward-6(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

By order

Assistant Registrar, Kolkata Benches