

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No. 7423/Del./2019
Assessment Year: 2016-17

Homes at Leisure LLP, 224, Vipul Trade Centre, Sohna Road, Gurgaon	Vs.	DCIT, CPC, Bangalore
PAN :AAGFH9418M		
(Appellant)		(Respondent)

Appellant by	Sh. Satyen Sethi, Adv. Ms. Gargee Sethee, Adv.
Respondent by	Sh. R.K. Gupta, Sr.DR

Date of hearing	08.06.2021
Date of pronouncement	28.06.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 20/06/2019 passed by the learned Commissioner of Income-tax (Appeals)-1, Gurgaon [in short 'the Ld. CIT(A)'] for assessment year 2016-17 against the order passed under section 143(1) of the Income-tax Act, 1961 (in short 'the Act') by the Deputy Commissioner of Income-tax, Central Processing Centre, Bangalore [hereinafter referred to as 'the Assessing Officer']. The Ld. CIT(A)

has dismissed the appeal on account of delay of 20 months, which has not been condoned by him. The grounds raised by the assessee are reproduced as under:

1. *That, on facts and circumstances of the case and in law, Ld. Commissioner of Income Tax (Appeals) [herein after referred to as "Ld. CIT(A)"] fails to consider the cause for delay in filing the appeal that has been submitted and also explained by the Appellant in the course of Appellate Proceedings. The CIT(A) has erred in rejecting the condonation of delay in filing the appeal, although there was a sufficient and reasonable cause for the delay in filing.*
2. *That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in upholding the disallowance of credit of TDS of Rs. 1,44,167/- in the Assessment Year 2016-17, without appreciating the contention of the Appellant regarding the allowability of the said credit.*
3. *That on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in disregarding the provisions of Rule 37BA of the Income Tax Rules, 1962 read with Section 199 of the Income Tax Act, 1961, and thereby upholding the disallowance of credit the TDS of Rs. 1,44,167/- for the assessment year 2016-17, the assessment year for which corresponding income is assessable.*
4. *Without prejudice to the above grounds of appeal, the Appellant submit that, the credit of TDS of Rs. 1,44,167/- should be allowed in the year in which TDS was deducted i.e. here in the present case, in Assessment Year 2015-16, if the same is not allowed in the year in which income is offered (i.e. here in the Assessment Year 2016-17).*
5. *That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.*

2. Briefly stated facts of the case are that the assessee filed return of income 31/07/2016, declaring total income of ₹4,28,020/- and claimed credit of Tax Deducted at Source (TDS) of ₹ 1,44,167/-. According to the assessee, the payee i.e. Mahindra Homes Private Limited, has shown above TDS in the statement corresponding to assessment year 2015-16 and

consequently, credit of this TDS is being reflected in form No. 26AS of the assessee for assessment year 2015-16. The Assessing Officer while passing order under section 143(1) dated 27/09/2016 did not allow the claim of credit of said TDS amount of ₹ 1,44,167 /- and demand of ₹ 1,45,082/- was raised in the impugned order dated 27/09/2016 under section 143(1) of the Act. Aggrieved, the assessee filed appeal before the Learned CIT(A) on 06/02/2018 i.e. after a delay of almost 20 months.

2.1 Before the Ld. CIT(A) , the assessee submitted that as per the provisions of section 199 of the Act read with Rule 37BA of Income Tax Rules, 1962 (in short 'the Rules') the credit of the TDS has to be given in the assessment year in which corresponding income is offered for taxation/assessable. According to the assessee in view of the denial of TDs credit, there were two options before him. First option was filing of rectification application before the Assessing Officer and second option was to file appeal before the Learned CIT(A). The assessee submitted that he exercised first option of filing rectification application, however later on the assessee came to know that the first option exercise by it was not appropriate and therefore resorted to section option for filing the appeal before the Learned CIT(A).

2.2 The Ld. CIT(A) did not condone the delay in filing the appeal on the ground that there was no sufficient cause for the delay in filing the appeal. The Learned CIT(A) relied on the various decisions cited in his order.

3. Before us, both the parties appeared through Video-Conferencing facility.

4. We have heard rival submission of the parties on the issue in dispute. According to us the only dispute is whether the reason for delay in filing the appeal constitutes sufficient cause or not. The contention of the assessee that it has filed rectification application before the Assessing Officer and which was not disposed off and therefore the filed the present appeal before the Learned CIT(A). In our opinion, the tax of ₹ 1,44,167/- has been deducted at source by the payee and deposited in government account on behalf of the assessee. The payee in his TDS return shown the tax deducted in assessment year 2015-16, whereas according to the assessee, this income was received in assessment year 2016-17 and therefore credit was claimed in the return filed for assessment year 2016-17. The Assessing Officer in order under section 143(1) has not given credit, probably because same was not reflected in information of the pre-paid taxes for the year under consideration available on system of the Income-tax Department. In our opinion, prima-facie this was an issue of rectification and the Assessing Officer should have disposed the rectification application of the assessee. But the assessee cautiously opted for the alternative remedy. There is no dispute as to deduction of the tax amounting to ₹ 1, 44, 167/- and the assessee cannot be deprived of the credit of the said tax deposited. The delay has occurred due to exercising of the option of rectification application, which remained unattended by the Department. The assessee is not gaining in any manner in filing the appeal with the delay. No *malafide* has been observed in the action of the assessee. In our opinion, in such circumstances, filing of the appeal with the delay, constitute a sufficient and

reasonable cause. In the interest of substantial justice, rejecting the request of condonation of the delay in filing the appeal by the Ld. CIT(A) is not justified. Accordingly, the finding of the Ld. CIT(A) on the issue in dispute is set aside and this appeal is restored to file of the Ld. CIT(A) for deciding afresh on merit. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 28th June, 2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 28th June, 2021.

RK/-(DTS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi