

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4788/Del/2014
Asstt. Year: 2011-12

Valley Iron & Steel Co. Ltd., Exchange Store Building, Sham Nath Marg, Civil Lines, New Delhi.	Vs.	ACIT, Central Circle 5 Jhandewalan New Delhi
(Appellant)		(Respondent)

Assessee by:	Shri Raj Kumar Gupta, Advocate Shri Sumit Goel, CA
Department by :	Shri Kumar Hrishikesh, CIT(DR)
Date of Hearing	08/05/2019
Date of pronouncement	20/05/2019

ORDER

PER O.P. KANT, A.M.

This appeal by the assessee is directed against order dated 31/07/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-XXXI, New Delhi [in short the Ld. CIT(A)] for assessment year 2011-12 in relation to penalty levied by the Assessing Officer for non-payment of self-assessment tax. The grounds of appeal are reproduced as under:

- I A. *“That under the facts and circumstances. the Ld. CIT (A) erred in law as well as on merits, in assuming that there is delay in filing the appeal and further erred in not condoning the alleged delay and in dismissing the appeal.*
- B. *That as per finding of Hon’ble ITAT in Para - 8 of order dated 14.03.2014 after treating the date of remittance of self - asstt. tax as the date of removal of defect in filing the appeal. There is no question for any delay in filing the appeal when un - disputedly the appeal was filed within the prescribed period or 30 day from the date of service of relevant order.*
- 2A. *That without prejudice, to G.N. I. under the facts and circumstances. Ld. CIT (A) erred in law as well as on merits in not condoning the delay in filing the appeal. If any.*
- B. *That under the facts and circumstances. there existed a reasonable cause and justifiable reasons for not depositing the self - asstt Tax within the time prescribed u/s 249 (4). hence. the Ld. CIT (A) erred in holding that the assessee failed in proving that there was a serious financial crunch for postponing the payment of tax liability.*
3. *That under the facts and circumstances levy of penalty, of Rs. 6,42.85,283/- u/s. 140 A (3) is absolutely unsustainable in law as well as on merits*
4. *That without prejudice. no penalty can be levied for default of payment of interest therefore, the penalty to the extent or Rs. 63.96,689/ - is contrary to law.*
5. *That without prejudice the penalty calculated @ 100% is without any basis so far as rate of 100% is concerned. At any rate, it highly – highly excessive.”*

2. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 24/11/2011 declaring nil income under the regular provisions of the Income Tax Act, 1961 (in short 'the Act') but declared income under Minimum Alternative Tax (MAT) provisions u/s 115JB of the Act amounting to Rs. 29,38,05,621/-and computed tax liability of Rs. 6,49,53,619/-payable u/s 140A(1) of the Act including interest u/s 234B and 234C of the Act. The assessee did not make payment of the admitted tax liability u/s 140A of the Act and filed return of income showing tax amount payable of Rs. 6,42,85,283/-. In view of non-payment of self-assessment tax, the Assessing Officer issued show cause notice to the assessee as why the penalty u/s 140A(3) may not be levied. After repeated adjournment and non-compliance, the assessee filed written submission. The Ld. Assessing Officer after considering written submission of the assessee held that the assessee failed to establish any reasonable cause for non-payment of admitted tax liability and accordingly levied penalty equivalent to 100% of the self-assessment tax amounting to Rs. 6,42,85,283/- in order dated 27/04/2012 u/s 140A(3) of the Act.

3. Against the said penalty, the assessee filed appeal before the Ld. CIT(A) on 07/05/2012, who dismissed the appeal vide order dated 22/01/2013 as unadmitted and non-est in view of provisions of section 249(4) of the Act, which prescribe that no appeal be admitted by the Ld. CIT(A) if the tax due on the returned income has not been paid at the time of filing of the appeal.

4. On further appeal by the assessee, the Income Tax Appellate Tribunal (in short 'the Tribunal') vide order dated 14/03/2014 in ITA No. 940/Del/2013, set aside the order of the Ld. CIT(A) and directed as under:

“7. We have heard the rival submissions and perused the records and the case laws cited by the parties. As per the version of the assessee, it has remitted the self assessed tax, therefore the Id CIT(A) may admit and adjudicate the appeal on merits In Shamraj Moorjani Vs. Dy. CIT(Hyd) reported in (2005) 93 TTJ (Hyd) 927, after referring to CIT Vs. Filmistan Ltd. 42 ITR 163 (SC); Anil Singhi Vs. ACIT (2003) 85 ITD 73 (Del) SB Mela Ram & Sons Vs. CIT 29 ITR607 (SC) in which one of us was party in Hyderabad 'B' Bench has held that:-

"30 In the light of the decisions cited above, the judicial view appears to be that the appeals before the CIT(A) should be considered as having been properly filed on the date of payment of admitted taxes on returned income, though the memorandum of appeal was presented within the time and all that remains for consideration before the CIT(A) is whether the delay can be condoned or not. "

8. In the light of the said decision, we ore of the considered opinion that the date of remittance of self assessed Tax by the assessee as the date of removal of defect in filing the appeal and if any delay happened, it need to be explained by the assessee and if the Id CIT(A) is satisfied with the explanation may condone the delay and adjudicate the appeal on merits.”

5. In second round of proceedings, the Ld. CIT(A) rejected the request of the assessee for condonation of the delay and dismissed the appeal observing as under:

“4.1 Hon. ITAT has vide its order dated 14.03.2014 has directed to treat the date of remittance of S.A. tax as the date of filing of

appeal and if any delay happened the same needs to be explained by the assessee and that if CIT (A) is satisfied with the explanation he may condone the delay and adjudicate, the appeal on merits. In the written submissions filed on 25.07.2014, the appellant has stated that the appeal was filed on 07.05.2012 which is within time taking into account the date of service of order by the AO being 24.07.2012. It has been further stated that, if there was any delay, in any manner whatsoever, the same may be condoned. Assessee has given certain reasons for delay in depositing SA tax, is the financial difficulties being faced by the appellant. The AR has relied upon the order of the undersigned dated 22.1.2013 wherein the penalty levied by the AO u/s 140A (3)/221 was reduced to Rs. 10 lacs on the ground that there were financial difficulties for delay in payment of self-assessment tax. For the present appeal also, the AR' has made very general submission about financial difficulties by citing letters from the banks requesting the assessee to acquire the outstanding loans etc.

4.2. I note here that the assessee seems to have made it a habit not to honour its statutory obligation of payment of tax at the time of filing the return of income. It is observed that the appellant has, however, been carrying on with its business with sizeable turnover running into hundreds of crores. Discharge of tax liability appears to be their last priority as observed from this conduct. In these circumstances, I do not agree that assessee could give priority to its business and not to its statutory responsibility of discharging the tax liability. In view of this I am of the view that repeated defaults in payment of self-assessment tax resulting in delay in filing of appeal cannot be taken lightly.

4.3. *There are no facts to show that the appellant did not have the capacity to make the payment of self-assessment tax of just Rs. 6.42 crores when the turnover of the assessee was more than Rs. 400 crores. The appellant company is a closely held company. The assessee has not been able to establish with facts and figures and with daily cash balances of the appellant and its group concerns that there was such a serious financial crunch that it had to postpone the discharge of tax liability again and again. Therefore, I hold that the assessee has not been able to make out a case for condonation of delay in filing the appeal. Hence, the assessee's request for condonation of delay is hereby rejected and to that extent the appeal is dismissed for statistical purposes."*

6. Aggrieved with the above finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

7. Before us, the Ld. Counsel of the assessee filed a paper book containing pages 1 to 65 and submitted that there was no delay at all in filing the appeal. He submitted that the order dated 27/04/2012 passed by the Assessing Officer levying penalty u/s 140A(3) of the Act was received by the assessee on 30/04/2012 and appeal was filed before the Ld. CIT(A) on 7/05/2012, thus it is within the prescribed period of 30 days from the date of the receipt of the order of the Assessing Officer. The Ld. Counsel referred to Page 22 -24 of the paper book and submitted that the Tribunal directed to treat the date of the deposit of self-assessment tax as the date of removal of defect and then if any delay is found, it was to be explained. The Ld. Counsel submitted that entire self-assessment tax along with interest u/s 234B amounting to Rs. 6,42,85,283/- has been deposited by the assessee on 28/03/2014. A date wise chart of payment has been

reproduced by the Ld. CIT(A) on page 4 of the impugned order. According to the Ld. Counsel that on depositing self-assessment tax, the defect stood removed in the appeal already filed and therefore delay was to be calculated only with respect to the date of receipt of the penalty order of the Assessing Officer and the time taken in filing the appeal before the Ld. CIT(A). He submitted that the Ld. CIT(A) wrongly took the date of deposit of self-assessment tax as the date of filing of the appeal whereas the date of self-assessment tax payment was to be treated as the date of removal of defect in the appeal as originally filed. According to the Ld. Counsel, after the removal of the defect the Ld. CIT(A) was required to decide the appeal on merits as per the direction of the Tribunal (supra).

8. The Ld. Counsel referred to pages 7 to 19 of the paper book and submitted that the fact of financial difficulty in making the self-assessment tax was evident in view of the various letters issued by the banks regarding overdue interest payment and commitment charges against letter of credit. He submitted that the Ld. CIT(A) ignored those evidences supporting the financial difficulty faced by the assessee.

9. On the contrary, the Ld. DR submitted that in the immediately preceding assessment year also the Assessing Officer levied the penalty for non payment of self-assessment tax and thus the assessee is a habitual defaulter in making self-assessment tax payment without justified reasons.

10. We have heard the rival submissions and perused the relevant material on record. In the case, the assessee has paid the admitted self-assessment tax liability on various dates as under:

On 23.03.2012 (As per Form 26AS) 75,00,000/-

On 05.03.2012 (--- do ----) 75,00,000/-

On 16.02.2012 (--- do ----) 75,00,000/-

On 29.09.2011 (--- do ----) 1,25,00,000/-

On 23.09.2011 (--- do ----) 1,00,00,000/-

On 25.02.2014 (--- do ----) 20,00,000/-

On 28.02.2014 (--- do ----) 20,00,0001-

On 04.03.2014 (--- do ----) 19,48,906/-

On 28.03.2014 (--- do ----). 1,33,36,377/- 6,42,85,283/-

11. The Tribunal in order dated 14.3.2014 has noted that the assessee has remitted all the pending self assessment tax and accordingly the order of the Ld. CIT(A) was set aside. But we find that the assessee misrepresented the facts before the Tribunal. It is evident from above chart that on 14/03/2014, i.e. the date of order of the Tribunal, the self-assessment tax liability of Rs. 1,33,36,377/- was pending and entire self-assessment tax liability has been paid finally on 28/03/2014.

12. The assessee filed appeal before the Ld. CIT(A) on 07/05/2012 and which is within the prescribed period of 30 days of filing of the appeal after receipt of the order of the Assessing Officer. On perusal of the order of Tribunal(supra) , we find that the Tribunal directed to treat the date of remittance of self-assessment tax paid by the assessee as the date of removal of the defect in filing the appeal and condone the delay if satisfied and adjudicate the appeal on merits.

13. But in second round of proceeding , the Ld. CIT(A) treated the date of payment of the self-assessment tax as the date of filing appeal before the Ld. CIT(A) and thus according to him, the appeal was filed after a delay of the substantial period . The Ld. CIT(A) accordingly examined the issue of condonation of the delay and found that the assessee failed to produce daily cash balances details of assessee and its group concern. In view of the Ld. CIT(A) , the assessee failed to support its claim of serious financial crunch as the main reason of non-payment of admitted tax liability and delay in filing appeal.

14. In our opinion , the Ld. CIT(A) failed to notice that the appeal was filed originally within the prescribed period of 30 days from the receipt of the order of Assessing Officer. Once the defect of remittance of self-assessment tax stands removed the Ld. CIT(A) was required to adjudicate the appeal on merits as directed by the Tribunal (supra). In our view, the action of the Ld. CIT(A) is not in accordance with the direction of the Tribunal(supra). In view of the above facts and in the interest of justice, we set aside the order of the Ld. CIT(A) and restore the appeal to the Ld. CIT(A) for adjudicating on merit in accordance with law. The grounds raised by the assessee are allowed for statistical purposes.

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

This decision was pronounced in the Open Court on 20th May, 2019.

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 20/05/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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