THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member**
**And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 224, 225, 226, 227 & 228/Ahd/2018**
**Assessment Year 2008-09 to 2011-12 & 2014-15**

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| Mansha Textile Pvt. Ltd.<br>1, Vikram Society, Gotri Road, Vadodara-390020<br>PAN: AADCM0191J<br>(Appellant) | Vs | ITO,<br>Ward-2(1)(1),<br>Baroda<br>(Respondent) |

**Assessee by:** **Ms. Urvashi Shodhan, A.R.**
**Revenue by:** **Shri Rakesh Jha, Sr. D.R.**

Date of hearing : 16-09-2022
Date of pronouncement : 28-09-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

These five appeals have been filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-2 CAB/(A)-2/220/15-16, Vadodara in Appeal nos. CAB/(A)-2/220/15-16, CAB/(A)-2/221/15-16, CAB/(A)-2/219/15-16, CAB/(A)-2/218/15-16 & CAB/Vadodara-2/10723/15-16 vide order dated 29/11/2016 & 31.10.2017 passed for the Assessment Years 2008-09 to 2011-12 & 2014-15.

2. Since common issues are involved for all the years under consideration, the same are being disposed of by way of a common order.

3. The assessee has taken the following grounds of appeal for assessment year 2008-09. Since the grounds of appeal for all the years under consideration are principally common, the same are not being repeated for sake of brevity.

4. **Revised grounds of appeal for assessment of 2008-09:**

*"1. That the Learned CIT (Appeal) has erred in law by confirming the reopening of the assessment u/s 148 of the Income Tax Act, 1961.*

*2. That the Learned CIT (Appeal) has further erred in law by confirming an addition of Rs. 14,99,753/- as rental income after all owing standard deduction and without considering the facts submitted to him at the time of hearing.*

*3. That the Learned CIT (Appeal) has also erred in law by confirming penalty proceedings u/s 274 r.w.s. 271 (1)(c) of the Income Tax Act.*

*Any other ground that may meet at the end of justice shall be submitted at the time of hearing."*

5. **Additional grounds of appeal for assessment of 2008-09:**

*"Appellant craves leave to raise this additional ground of appeal before the Hon'ble ITAT. This is a legal ground and therefore as per the decision of Hon'ble Supreme Court in the case of National Thermal Power (229 ITR 383) it can be raised before the Hon'ble ITAT.*

*1. Ld. CIT (A) erred in law and on facts in dismissing the appeal by holding that there was no reasonable cause for filing the appeal belatedly.*

*2. Ld. CIT (A) erred in law and on facts in not granting credit of tax deducted at source from rental income while confirming action of AO assessing rental income in the hands of the assessee.*

*Appellant also craves leave to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of the hearing of the appeal."*

**Application for condonation of delay in filing appeal:**

6. Before we proceed to discuss the case on merits, we observe that the appeal for assessment year 2008-09 to 2010-11 is time-barred by 360 days (for each of the assessment years) and the appeal for assessment year 2014-15 is time-barred by 15 days. The counsel for the assessee submitted affidavit of the Director/Authorised Signatory to the effect that the delay has been primarily caused due to ongoing dispute between the current directors of the assessee company M/s Mansha Textile Private Limited and its ex-directors, who had to be removed as Directors of the company on account of illegally mortgaging the assets of the company to obtain loan on behalf of the company, leasing out the property of the company without prior knowledge/intimation to the present directors of the assessee company and fraudulently siphoning off the income of the assessee company to another bank account without the knowledge of the directors of the assessee company. As a result of the above dispute, complaint has been filed by the present directors with the Ministry of Corporate Affairs (MCA) as well as National Company Law Tribunal (NCLT). However, despite substantial

lapse of time, the dispute could not be settled amicably (in fact the dispute is still persisting) and hence the existing directors of the assessee company, M/s Mansha Textile Private Limited, decided to complete the pending legal matters, which led to delay in filing of appeal before the ITAT (360 days for assessment years 2008-09 to 2011-12 and 15 days delay for assessment year 2014-15). The assessee submitted before us several documents in support of the ongoing dispute between the present directors of the company and ex-directors viz. intimation letter to Mr Deepak Ochhaney (ex-director of assessee company) for removal from directorship as per resolution passed in the EGM on 20-03-2006, public notice stating removal of directors published in the newspaper, application made under Regulation 44 of the Company Law Board Regulations etc. Before us, the counsel for the assessee also submitted that for all the years under consideration, no income had been received by the assessee company which is sought to be taxed since the same was illegally siphoned off by the ex-directors, who have now been removed. Therefore, in the interests of justice, the assessee company may be allowed to present its case on merits. We have heard the arguments of the counsel for the assessee and documents placed before us. We are of the considered view that there is reasonable cause for delay in filing of the appeals for the years under consideration, in light of the facts placed before us. The Supreme Court in the case of **Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072**, analyzed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life purpose for the existence of the institution of Courts**. It**

**was further observed that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.** The Apex Court further held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Therefore, considering the facts placed before us and taking into consideration the totality of circumstances, in the interests of justice, we are hereby condoning the delay of 360 days in filing appeal before us for assessment years 2008-09 to 2011-12 and 15 days delay in filing of appeal for assessment year 2014-15.

**On merits:**

**Assessment Year 2008-09:**

7. The brief facts in relation to this case are that on verification of details in form 26AS, the AO observed that the assessee had received an amount of ₹ 21,42,504/- as rental income for the year under consideration, however, the same was not offered to tax by the assessee company in the return of

income. Accordingly, the AO reopened the assessment under section 147 of the Act. In the course of re-assessment proceedings, the AO observed that various parties had made rental payment to the assessee company, which has been found credited in the current account of the assessee company held with Axis Bank Ltd, however assessee has not shown this bank account in its books of account for the year under consideration and neither the rental receipts were offered to tax by the assessee in the return of income. In the submissions before the AO, the assessee submitted that the assessee company was formed in the year 1988 to carry on the business of textile products and was having its registered office at Vadodara, Gujarat. Original Directors of the company were Mr Ashok Khurana and Mrs Manju Khurana. Later one Mr Deepak Ochhaney approached Mr Khurana with the proposal for development of commercial property at Noida on 50-50 sharing basis. Accordingly, the company submitted request with Noida Authority on 04-04-2000 for allotment of commercial plot, which was allotted by way of lease deed on 04-07-2002. Mr Deepak Ochhaney was authorised to sign the lease deed on behalf of the company. Thereafter, Mr Deepak Ochhaney (and 3 of his family members) were admitted as shareholders the assessee company, with the Khurana group holding 35,720 shares and Deepak Ochhaney group holding 10,645 shares respectively. However, subsequently the Khurana group observed that the Ochhaney group was not working in the interest of the assessee company and therefore EGM was called on 28 March 2006 for removal of the Mr Deepak Ochhaney and his family members as directors of the assessee company. Public notice was issued in "Business Standard" newspaper in New Delhi on 24 March 2006 intimating the public removal of these directors from the company's Board of Directors

and necessary Form number 32 was also filed with Registrar of Companies. Both the groups also approached the Company Law Board, who vide order dated 11-12-2008 passed an order directing both the parties to maintain status quo with respect to fixed assets, shareholdings and share capital of the company. Meanwhile, the Deepak Ochhaney group unlawfully took complete possession of the property at Noida and rented out the premises to various tenants and also illegally siphoned of the rental income to another bank account with Axis Bank Ltd. Accordingly, the contention of the assessee before the AO was that neither the Directors of the company had entered into any rent agreement on behalf of the company nor money has been deposited in the official bank account of the company towards rental receipts. The matter came to the notice of the assessee company only when the TDS certificates were received at the registered office of the company. The assessee company approached the Company Law Board in this matter and are exploring the possibility of restricting the Deepak Ochhaney group from taking the rental income from the tenants. Therefore, the assessee company contended that since no income had a been received by the assessee company during the year under consideration, therefore the same was not offered to tax as rental income. The AO however rejected the assessee's contention and added a sum of ₹ 2,142,504/- as rental income of the assessee (after allowing standard deduction@30%) for the year under consideration. While passing the order, the AO made the following observations:

*"It is clear from the above that the assessee company was always in knowledge of the fact of the rent being received because,*
*i) The assessee was aware that it had some properties.*

*ii) It beats all logic that a company never bothered to find out that what is happening in these prime properties and which tenants are residing in them.*

*iii) It does not seems logical that the assessee company has never tried to find out that in which bank account the credits are being reflected in it's 26AS Details & accordingly TDS certificates are being issued. iv) It also does not seems logical that the assessee company has never approached in the bank, if here was any fraudulent bank account has opened in it.*

*7. Despite of above reality and facts of the case, the AR of the assessee vide his letter dated 03.09.2015, intentionally denied to offer undisclosed rent income of Rs. 21,42,504/- for tax though it is fact that the assessee company has not disclosed same in it's return of income and shown nil rent income for the year under consideration. Instead of to make the offer of the undisclosed rent income for tax by the assessee, the AR of the assessee requested to drop the reopening proceedings, however, same can not be entertained as it is evident from the records that it has received rent income which is not shown by it in the return furnished for the year under consideration.*

*8. The verification of the bank account held by the assessee with the Axis Bank Limited and its reconciliation has been made with the 26AS Details as well as with the details called u/s 133(6) of the Income-tax. The reconciliation shows that huge amount of clearing entries have been made during the year under consideration. The credit entries made in the bank account reveals that an amount of Rs. 21,42,504/- has been received as rent from the above named three tenants during the year. Since, the deductors have also deducted TDS u/s 1941 of the Act treating the same as "income from house property". Thus, the income from house property is calculated as under-*

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| *Total rent received during the year* | *Rs. 21,42,504/-* |

*Less: standard deductions: Rs. 6,42,751/-*

*Income from house property Rs. 14,99,753/-"*

7. In appeal before Ld. CIT(Appeals), dismissed the assessee's appeal with the following observations:

*"4.2 Without prejudice to the above, it is stated that the rental income was not disclosed by the appellant in the return of income and accordingly, notice u/s 148 was issued after recording the reasons. The reasons recorded were also communicated to the appellant. Hence it is held that A.CX had validly assumed jurisdiction u/s 148 and accordingly first Ground is dismissed. The issue pertaining to taxability of rental income has been already decided in subsequent assessment years including A.Y. 2012-13. The findings recorded in appellate order dated 31.05.16 in the case of appellant for A.Y. 2012-13, in Appeal No.CAB/(A)-2/052/15-16 are reproduced as under:*

*" 4. I have carefully considered the facts on record and submissions of the ld. A.R. Undisputed/y,* ***properties located at Noida are belonging to the appellant company and hence any income arising from is always pertaining*** *to the appellant company only. As a matter of fact, the company itself cannot conduct the business being an artificial person and hence the business of company is a/ways carried out by the directors or any other authorized person. Accordingly, the rental income arising from the properties of the company located at Noida was being deposited in a bank account with Axis Bank Ltd. It is highly unbelievable that the appellant company was not aware about the rental income and its withdrawal from the bank account even though the same was being done from F.Y. 2006 07 and the appellant was continuously having information about tax deducted from the rental income. It is also noticed that no FIR has been filed against the directors of Ochaney group. Therefore, it is dearly established that the rental income has to be assessed in the hands of appellant company only. Even if the income was withdrawn by the ex-directors, it amounts to application of the income only and hence the appellant company cannot be a/lowed any benefit on this account. In view of*

*these facts and circumstances of the case, thus I hold that AO has rightly assessed the rental income arising from the properties belonging to the appellant company, in the hands of appellant. Accordingly, the addition made on this account at Rs. 40,30,495/- after allowing deduction u/s 24(a) is upheld. Thus appellant fails in respect of Ground No. l."*

*4.2.1 Since the facts are identical in this year also, I hold that AO has rightly assessed the rental income in the hands of appellant company and hence the addition made is sustained.*

*4.2.2 The appellant has also objected to initiation of penalty proceedings. Since no appeal lies against initiation of penalty proceedings, this ground also deserves to be dismissed and accordingly the same is dismissed. Thus appellant fails in respect of* ***Second Ground."***

8. The assessee is in appeal before us against the aforesaid order of Ld. CIT(Appeals). The counsel for the assessee submitted that the order has been passed by Ld. CIT(Appeals) without granting adequate opportunity of hearing to the assessee. The assessee had sought adjournment, which was not granted by Ld. CIT(Appeals), and he proceeded to dismiss the appeal of the assessee, relying solely upon the order passed by AO, and without appreciating the merits of the case. Accordingly, in the interest of justice, the counsel for the assessee requested that the matter may kindly be set aside to the file of Ld. CIT(Appeals) for adjudication on merits, after giving due opportunity of hearing to assessee.

9. We have heard the contentions of the assessee and perused the material on record. The primary arguments of the assessee are two-fold: firstly, on merits, the assessee submitted that the rental income did not accrue to the assessee in the first place, since the same was siphoned off

illegally and fraudulently by the directors of the company. Therefore, the assessee was never in receipt of the rental income, since neither the assessee company had entered into a lease agreement with the tenants and nor was the rental income ever received by the assessee company, accordingly the said rental income was not offered to tax by the assessee in its return of income. Secondly, inadequate opportunity of hearing was afforded by the Ld. CIT(Appeals) and the case was dismissed without hearing the same on merits for all the years under consideration.

9.1 In view of the above, in the interest of justice, we are setting aside the case to the file of the Ld. CIT(Appeals) for hearing the case afresh on merits, after giving due opportunity of hearing to the assessee.

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

**Assessment years 2009-10 to 2011-12 and 2014-15:**

11. We observe that that similar issues are present for all the years under consideration. For assessment year 2008-09 to 2011-12, all the assessments were completed vide order dated 27-10-2015 by AO and Ld. CIT(Appeals) dismissed the appeals of the assessee by order dated 29-11-2016. For assessment year 2014-15, there is an additional Grounds in respect of addition of ₹ 13,04,355/- on account of unexplained investment, which has been confirmed by the Ld. CIT(Appeals) on the ground that assessee failed to offer any explanation about these credit entries in the bank account.

Accordingly, the appeal for all the years under consideration are being set aside to the Ld. CIT(Appeals) for de novo consideration after allowing opportunity of hearing to the assessee to present its case on merits.

12. In the combined result, all the five appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28-09-2022

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| **Sd/-** | **Sd/-** |
| **(ANNAPURNA GUPTA)** | **(SIDDHARTHA NAUTIYAL)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

**Ahmedabad : Dated 28/09/2022** ***TRUE COPY***

**आदेश की प्रतिलिपि अग्रेषित** / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद