

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

2.

+

ITA 38/2016 & CM No.875/2016

COMMISSIONER OF INCOME TAX-IV

..... Appellant

Through: Mr Ashok Manchanda, Senior Standing
Counsel with Ms Vibhooti Malhotra, Junior
Standing Counsel.

versus

D.D. GEARS PVT. LTD.

..... Respondent

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

%

20.01.2016

1. There is a delay of 507 days in re-filing the appeal. The explanation offered is the standard one regarding the practice directions issued by this Court for e-filing of the appeals. As has already been observed by this Court in several orders, the practice directions were issued after consultation with the bar and after giving sufficient time for the bar to get acquainted with the requirement of e-filing. Additionally, the Court has also provided scanning machines at the filing counter so that no difficulty is caused to the bar for switching over to the system of e-filing. In any event, the delay of over a year on this ground is wholly unacceptable.

2. Consequently, the Court is not persuaded to condone the extraordinary delay of 507 days in re-filing the appeal. The application seeking condonation of the delay of 507 days in re-filing the appeal is dismissed.

3. Nevertheless the case has also been examined on merits. The issue urged by the Revenue in this appeal under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 29th November 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 365/Del/2012 for the Assessment Year ('AY') 2008-09 is whether the ITAT erred in confirming the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] deleting the addition made by the Assessing Officer (AO) of Rs.2,52,32,288 on account of prior period expenses claimed on account of financial charges.

4. The Assessee had taken a loan from Oriental Bank of Commerce and that loan became an NPA in the year 2000. A onetime settlement was reached with the bank during the AY 2008-09 in terms of the directions issued by this Court in separate proceedings in that regard. The Assessee filed its return declaring a loss of Rs.23,33,160/-.

5. The return was picked up for scrutiny and an assessment order was passed

on 27th December 2010 under Section 143(3) of the Act. The AO allowed interest only to the extent of Rs.34,77,505/- which according to him was payable during the AY under consideration. The rest of the interest amount of Rs.2,52,31,288/- was disallowed on the ground that it pertained to a prior period and could not be allowed in the AY in question.

6. In the appeal filed by the Assessee before the CIT(A), it was pointed out that the settlement was reached with the bank in terms of the order dated 19th December, 2007 of the High Court and the settlement order was issued on 4th February, 2008. In terms thereof, the loan liability including interest from the year 2000 onwards was settled at Rs.559.29 lakhs as on 31st December, 2007. It is only thereafter that the Assessee debited the interest amount of Rs.2,87,08,793/- pertaining to the period from 1st October, 2000 to 31st March, 2007 which was accordingly booked in the book of accounts from the financial year 2007-08. The CIT(A) accepted the plea of the Assessee and deleted the disallowance made by the AO. This has been concurred with by the ITAT.

7. The Court finds that no error has been committed either by the CIT(A) or the ITAT in coming to the above conclusion. The liability to pay the interest

got crystallised only as a result of one time settlement during the AY in question.

8. It is then urged by the learned counsel for the Revenue that a further issue that arises in the present case is whether on account of the entire interest amount as per the settlement not having been actually paid to the bank during the AY in question it is liable to be disallowed in terms of Section 43-B of the Act. The Court finds that this point has not been urged at any stage of the proceedings either before the CIT(A) or the ITAT. The Court, therefore, does not consider it appropriate to permit the Revenue to raise it for the first time before this Court.

9. Consequently, the appeal is dismissed both on the grounds of the extraordinary delay of 507 days in re-filing the appeal as well as on merits.

S. MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 20, 2016
MK