



\$~38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 23.08.2023

+ **ITA 475/2023**

M/S DEEP AND VEER CONSTRUCTION
CO. PVT. LTD.

..... Appellant

Through: Mr Kanishk Ahuja with Mr Vinod
Khanna and Mr Pushkar Khanna,
Adv.

versus

THE PR. COMMISSIONER OF INCOME TAX,
DELHI – 3

..... Respondent

Through: Mr Kunal Sharma, Sr Standing
Counsel with Mr Shubhendu
Bhattacharya, Standing Counsel and
Ms Zehra Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.43389/2023

1. Allowed, subject to just exceptions.

ITA 475/2023

2. This appeal concerns Assessment Year (AY) 2006-07. *Via* this appeal, the appellant/assessee has assailed the order dated 19.01.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

2.1 The Tribunal dismissed the appeal of the appellant on the ground that it was barred by time.



3. Concededly, there was a delay of 968 days in approaching the Tribunal.

4. The Tribunal, after examining the reasons proffered by the appellant/assessee, concluded that no reasonable cause was shown by it to condone the delay.

5. Broadly, the appellant/assessee submitted that the delay occurred on account the fact that the casefile was being handled by its accountant, and since the accountant left the organization, the appellant/assessee had no way of knowing that the Commissioner of Income Tax (Appeals)'s [in short, "CIT(A)"] order dated 01.12.2015 had been received by the appellant/assessee.

6. It is important to note that the appellant/assessee concedes that the CIT(A)'s order dated 01.12.2015 against which an appeal was preferred before the Tribunal was received by it on 18.01.2016. Admittedly, this order remained in its accountant's knowledge till he left the organization. The said order was brought to the notice of the concerned personnel of the appellant/assessee only in July 2018, which led to the instant appeal being filed with the Tribunal in September 2018.

7. Counsel for the appellant/assessee says that, on merits, it had a good case. In this context, our attention has been drawn to the order passed by the CIT(A) in the first round dated 27.05.2013.

7.1 It is the submission of the counsel for the appellant/assessee that the only addition with which the appellant/assessee was dissatisfied was the disallowance of hiring charges.

7.2 It is further submitted that disallowance was made by the Assessing



Officer (AO) in the first round, on account of the fact the Tax Deducted at Source (TDS) had not been deducted by the appellant/assessee while paying the charges for hiring equipment and machinery.

7.3 The submission is that the TDS was deductible as per the provisions of the Income Tax Act, 1961 [in short, “Act”], obtaining at the relevant point in time, i.e., only from 16.07.2007. In other words, during the period in issue, i.e., AY 2006-07, the appellant/assessee was not required to deduct TDS.

8. Counsel for the appellant/assessee says that this aspect was appreciated by the CIT(A) in the first round and consequently, after scaling down the disallowance for hiring charges, which was initially an amount equivalent to Rs.79,32,092/-, the CIT(A) remanded the issue to the AO for examination.

9. To be noted, the quantum of disallowance that the AO was required to examine was Rs.56,68,592/-.

10. The CIT(A) had given relief to the extent of Rs.22,63,500/- *via* order dated 27.05.2013.

11. The AO, in the second round, in his order dated 13.03.2014, records that the appellant/assessee was unable to satisfy him that the expenses said to have been incurred on hiring equipment and machinery were genuine.

12. Counsel for the appellant/revenue says that the bills and vouchers were produced, and contends that the monies were paid via banking channel.

13. However, according to the AO, this was not sufficient in view of the fact that the appellant/assessee had failed to provide documentary evidence which would have established that the equipment and machinery had, in



fact, been hired by the appellant/assessee.

13.1 In this behalf, the AO noticed that although summons were issued under Section 133(6) of the Act to the sundry creditors, none of them responded to the same.

13.2 Furthermore, the AO noticed that no confirmation of the address of the persons, who supposedly supplied machinery and equipment to the appellant/assessee, was submitted.

14. Thus, having regard to the overall sense that the AO had, which was that this was not a genuine transaction, in our view, if the appellant/assessee was aggrieved by the conclusions reached in the matter, it should have acted with alacrity, and not slept over its right.

16. As noted above, there was a failure on the part of the appellant/assessee to institute an appeal even after it discovered the order passed by the CIT(A) in the second round, i.e., the order dated 01.012.2015. It took nearly three (3) months to approach the Tribunal.

17. Therefore, we are of the opinion that no interference is called for with the order of the Tribunal.

18. According to us, no substantial question of law arises for our consideration.

19. The appeal is, accordingly, dismissed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

AUGUST 23, 2023/pmc