

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI ‘E’ BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Pavan Kumar Gadale (Judicial Member)]**

MA No. 69/Mum/2021
(Arising out of ITA No. 350/Mum/2009)
Assessment Year: 2005-06

M/s. Techknoweledge Interactive Partners P. Ltd.**Appellant**
*403, Royal Plaza,
Lokhandwala Link Road,
Andheri (W), Mumbai-400 053
[PAN: AABCT 9422 B]*

Vs

Income Tax Officer-8(3)(3)**Respondent**
Mumbai

Appearances by

Snehal Shah *for the applicant*
Sunil Deshpande *for the respondent*

Date of concluding the hearing : August 6, 2021
Date of pronouncing the order : August 6, 2021

ORAL ORDER

(CORRECTED)

Per Pramod Kumar, VP:

1. By way of this petition, the assessee-applicant seeks recall of the *ex parte* order dated 30.03.2010, dismissing the appeal filed by the assessee summarily on the ground that “the assessee is not interested to prosecute the appeal.” There is no discussion whatsoever on merits of the issues raised in the grounds of appeal set out in the memorandum of appeal.

2. The assessee has moved this present petition on 05.03.2021. When it was noticed that the petition is filed on 05.03.2021, which is more than a decade after the order was passed on 30.03.2010, the Id. Counsel of the assessee made elaborate submissions on the factual aspect that the assessee was prevented by sufficient cause from filing of this Miscellaneous Application, inasmuch as, the impugned order was never served upon the assessee, and on the legal aspect, that the time limit set out in section 254(2) of Income Tax Act does not come in

the way of entertaining the Miscellaneous Application seeking recall of summarily dismissed as *ex parte* order, which was not served upon the assessee, as held by the Hon'ble Delhi High Court in the case of *Golden Times Services (P.) Ltd. vs. Dy. CIT* [2020] 113 ITR taxmann.com 524 (Del). It was explained by the assessee that the then directors of the company were traversing through a very difficult patch in their lives, which culminated in death of Shri Kishore Dalal, the then Managing Director of the company on 18.05.2012, after long illness on account of brain tumour, and the death of Smt. Kalpana Dalal, the other director, on 15.03.2014. It was stated by the Id. Counsel of the assessee that upon the death of his parents, Shri Pankaj Dalal, who was till then leaving abroad returned to India and took over this company. It is submitted that at no stage, till the notice dated 21.01.2020, by the TRO was served upon the assessee, the present Managing Director of the company or anyone else in the company were even aware of the appeal having been dismissed by the Tribunal. The Id. Counsel of the assessee submits that it was only upon the information gathered from the TRO in the course of the proceedings, as a result of notice dated 21.01.20, that the assessee came to know that the appeal filed before the tribunal was actually dismissed. It is then explained that since the relevant records were not available in the tribunal, inasmuch as these are said to have been weeded out, the order in question was downloaded from the official website of the Tribunal. It is then that after the order was downloaded, the Covid-19 period was started, during which further action could not be initiated in this regard and in any event, this is the period which is covered for relaxation granted by the Hon'ble Court's above in limitation period. In any case, the impugned order has not been served upon the applicant by anyone.

3. The Id. Counsel of the assessee submitted that while there is indeed a huge delay in filing of the Miscellaneous Application, if it is to be counted from the date of the order, but then if we have to compute the period of limitation from the date of service of the order as is the mandate of the Hon'ble Delhi High Court in the case of *Golden Times Services (P.) Ltd.* (supra), there is, in fact, no delay on the part of the assessee in moving the application. We were thus urged to admit the Miscellaneous Application for consideration on merits. The Id. Counsel of the assessee has also explained that the way the grounds of appeal were drafted, the entire controversy which were sought to be adjudicated, was more than clear. The Id. Counsel of the assessee took us to the core issue in appeal before the Tribunal. It is then submitted that despite this factual situation, there was no adjudication on merits by the tribunal and the matter was dismissed summarily. The Id. Counsel of the assessee invites our attention to various judicial precedents holding that even when the applicant does not appear before the Tribunal, the Tribunal is duty bound to adjudicate the matter on merits and it is not open to the tribunal to summarily dismiss the appeal for want of prosecution. He, thus, submits that the Miscellaneous Application filed by him deserves to be allowed and prays that the matter be restored for disposal on merits.

4. The Id. Departmental Representative, on the other hand, points out that there is a huge delay in filing of the Miscellaneous Application and such an inordinate delay cannot be condoned. He submits that on one hand, the assessee did not take any action all alone and now on the strength of some judicial precedence which may have been given on the facts which are not *pari materia*, the assessee seeks recall of this order. We are, thus, urged to reject the Miscellaneous Application as time barred.

5. In response to a question from the bench, as to whether the Auditor had disclosed the liability in notes on accounts, the Id. Counsel of the assessee submitted that he is not aware of any such qualification in the auditor's report. He, however, prayed that even if there is lapse on the part of the auditor's, the assessee must not be punished for the same. It was also confirmed by the Id. Counsel of the assessee, in response to a query from the bench that the said amount is not shown as a contingent liability. The Id. Counsel of the assessee nevertheless prayed that even if there are lapses in reporting by the Auditor, or such or other procedural lapses, the same may not be put against the assessee for the present matter, where not only the assessee had no means to take any recourse against an order existence of which were known to the assessee, the order was also initiated in law for the simple reasons that there was no adjudication on merits. He, thus, once again prays for recall of the *ex parte* order dated 30.03.2010, summarily dismissing the appeal for want of prosecution.

6. We have heard the Id. Counsel of the assessee and perused the material available on record and duly considered the facts of the case in light of the applicable legal position.

7. We find that, while interpreting the scope of section 254(2), the Hon'ble Delhi High Court in the case of *Golden Times Services (P.) Ltd.* (supra) has extensively dealt with the question as to in what manner the limitation period for filing of the Miscellaneous Application is to be construed. Their Lordships have *inter alia* held that the interpretation of computing the limitation period from the date of the order would lead to manifestly unjust results and that in order to ensure that the agreed party avails its remedy in a meaningful manner, it is necessary to compute the limitation period from the date of the services of the order in question. In their inimitable words their lordships have *inter alia* observed as follows:

.....the real question before us is as to what would be the relevant date for the purpose of commencement of period of limitation. To hold the date of the order to be the relevant date for the purpose of calculating the period of six months envisaged under section 254(2) of the Act, can lead to several absurd and anomalous situations. An order passed without the knowledge of the aggrieved party, would render the remedy against the order meaningless as the same would be lost by limitation while the person aggrieved would not even know that an order has been passed. Such an interpretation would not advance the cause of justice and would not be the correct approach and thus cannot be countenanced. A person who is aggrieved or concerned with an order would legitimately be expected to exercise his rights conferred by the provision and unless the order is communicated or is known to him, either actually or constructively, he would not be in a position to avail such a remedy. The words "six months from the end of the month in which the order was passed" therefore, cannot be given a narrow and restrictive interpretation. There are several decisions of the Apex Court and other High Courts, where similar question came up for consideration. The Courts have always leaned in favour of an interpretation which would enable an aggrieved party to avail its remedy in a meaningful manner, so that the right conferred by a provision does not remain fanciful or illusionary.

8. It is thus clear that in order to make the scheme of section 254(2) workable and to ensure that the limitation period for filing of the appeal is to be computed in a manner in harmony with the law laid down by the Hon'ble High Court above, the limitation period is to be counted from the date of service of order and not the date of the order. No contrary judicial precedent has been brought to our notice. We are humbly bow to the wisdom of the Hon'ble High Court above. In this view of the matter and having regard to the fact there is no evidence of service of order and that there is no reason to dispute or doubt the statement made by the assessee including on the affidavit, we are of considered view that the plea of the DR deserves to be rejected and the Miscellaneous Application deserves to be decided on merits. We have also noticed that there is no adjudication on merits in the related order of the tribunal. The Hon'ble High Court above had time and again held that whether the assessee or his representative appears or not, the Tribunal is duty bound to decide the matter on merits. In any case, given the fact that admittedly no notice of hearing was served on the assessee, as the related notice had come back unserved and no efforts were made to serve the same to the ld. DR of the Income Tax Department either. In view of the above discussions, and taking into account the peculiar facts of this case, we deem it fit and proper to recall the impugned order dated 30.03.2010. The Registry is directed to fix the matter for hearing in the month of October, 2021. We may also add that since the original record before the Tribunal appears to have been weeded out, it is a case in which the file has to be reconstructed. The registry is directed to initiate the process of reconstruction of the appeal file, so that the matter can be taken upon for hearing in October, 2021. Learned counsel of the assessee as also the learned Departmental Representative are directed to fully co-operate in reconstruction of the file by submitting the copies of the relevant documents from their records. With these observations, the Miscellaneous Application filed by the assessee is allowed.

9. In the result, the Miscellaneous application is allowed. Dictated and pronounced in the open court today on the 6th day of August 2021

Sd/-
Pavan Kumar Gadale
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 6th day of August, 2021
Roshani, Sr. PS

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai