

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

I.T.A. No. 560/HYD/2016

Assessment Year: 2002-03

M/s. Frontier Informatics DCIT, Circle-1(3),
Ltd., Vs HYDERABAD
(Formerly M/s. Frontier
Informatics Technologies Ltd)
HYDERABAD
[PAN: AAACF5186B]

(Appellant)

(Respondent)

For Assessee : Shri K.C. Devdas, AR
For Revenue : Shri R. Mohan Reddy, DR

Date of Hearing : 10-05-2018
Date of Pronouncement : 06-06-2018

ORDER

PER B. RAMAKOTAIAH, A.M. :

This is an appeal by assessee against the order of the Commissioner of Income Tax (Appeals)-II, Hyderabad, dated 16-12-2011. The appeal was preferred with a delay of 1514 days. The reasons for delay were explained in an affidavit stating that the company was badly hit by the major recession in IT industry that took place in the year 2001 and was practically out of operations for the past five years and the Managing Director, who have acquainted with the facts of the case was running around for various affairs of the company

due to the litigation of the creditors of the company; service of loans to banks, resignation of all working directors, delay in depositing employees' PF, non-payment of salaries which ultimately triggered into state of depression and hospitalization. Due to health problems and various proceedings initiated, the Managing Director could not attend to any of the matters and after slowly acclimatizing with the issues took steps to prefer an appeal with a delay of 1514 days. It was prayed that the delay may be condoned and the appeal may be heard on merits. Ld.DR, however, objected to the same.

1.1. Considering the fact that though assessee has preferred an appeal on order u/s. 263 earlier, it was not pursued and was dismissed *ex-parte* confirming the said order u/s. 263, we are of the opinion that there are genuine difficulties faced by the company and the management in not pursuing the appeal in time. Keeping in mind the averments made in the affidavit, we are of the opinion that there is sufficient cause for preferring the appeal belatedly and accordingly, the delay is condoned and appeal is admitted.

2. Coming to the merits of the appeal, assessee originally filed return of income showing net loss of Rs. 61,21,720/- under the normal provisions of the Act and taxable income at NIL u/s. 115JB of the Act. The assessment was completed on 11-12-2007 reducing the net loss to Rs. 17,18,952/-. Ld.CIT noticed that assessee has not offered income u/s. 115JB of the

Act and accordingly invoked the provisions of Section 263 of the Act. In those proceedings, assessee made certain new claims and also submitted that books of account were not prepared as per the provisions of Company Law and if these claims are entertained, there will be no income which can be subjected to Section 115JB. After listing out the claims in para 5 and 6 of the order u/s. 263, Ld.CIT set aside the assessment, directing as under:

"7. In view of the above, I set aside the assessment for the assessment year 2002-03 and direct the Assessing Officer to make the assessment afresh by computing the profit chargeable to tax under section 115JB after giving an opportunity of being heard to the assessee. After finalization of assessment the Assessing Officer will recover the demand as per Law".

2.1. This order was subject matter of appeal before the ITAT, who dismissed the same *ex-parte* but considered the issue on merits also. In that order, ITAT has held that :

"7.In our considered opinion, non computation of book profit under section 115JB of the Act is an error which is prejudicial to the interest of revenue. It is not a case of change of opinion but non application of provisions of the Act and therefore the order passed by the assessing officer is an error which is prejudicial to the Interest of revenue. We find that the assessee company has made two fresh claims during the proceedings under section 263 of the Act before the CIT. The power of the Commissioner under section 263 of the Act is restricted only to the errors so far as they are prejudicial to the Interest of the revenue and if there was any other error, it is for the assessee to take up the issue in other appropriate proceedings. Our view is supported by the decision of the Madras High Court in the case of Hindi Bank Karur Limited vs. Addl CIT reported in 103 ITR 553.
Thus, the CIT after considering the facts elaborately in his order, rightly set aside the assessment for the assessment year under consideration and directed the assessing officer to make the

assessment afresh by computing the profit chargeable to tax under section 115JB of the Act after giving an opportunity of being heard to the assessee. In view of the above, we are in agreement with the order of the CIT and hence, no interference is called for. Accordingly, we confirm the order of the CIT and dismiss the appeal filed by the assessee."

2.2. In the consequential order passed by the AO, assessee has raised the fresh contentions which were not accepted. Assessee further contested before the Ld.CIT(A) and raised various grounds. Ld.CIT(A) in the impugned order was of the opinion that the grounds raised by assessee are vague and not on any specific issue and effective grounds of appeal are the legality of the assessment proceedings based on the order u/s. 263 and levy of interest u/s. 234B as per MAT provisions. Ld.CIT(A) after extracting the order of the ITAT held that assessee has not contested on merits of the case. Therefore, the appeal was dismissed.

3. It was the contention of Ld. Counsel that ground No. 6 raised before CIT(A) is on the merits of the issue which was not adjudicated by the Ld.CIT(A) and if given a chance, assessee would re-agitate the issue before the CIT(A). With reference to interest also it was the contention that interest is not warranted.

4. Ld.DR, however, relied on the orders of the Ld.CIT(A).

5. After considering the rival contentions, we are of the opinion that the order of CIT(A) cannot be upheld as assessee

has raised the ground No. 6 with reference to adjustments of Rs. 4,30,99,233/- from book profits. When this ground was raised specifically, the CIT(A) should have considered the ground whether it is a valid claim or not. Nothing was mentioned about the claim of assessee and in fact the CIT(A) was of the opinion that no issue on merit was contested. Considering that ground No. 6 has not been adjudicated, we are of the opinion that matter can be restored to CIT(A) to consider whether assessee has any merits in making the claims, while considering the issue on merits keeping in mind the order of the ITAT and also the order u/s. 263. Since this exercise has not been undertaken by the CIT(A), we set aside the issue to the file of CIT(A) to consider the grounds afresh, after giving due opportunity to assessee.

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

Order pronounced in the open court on 6th June, 2018

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Sd/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated 6th June, 2018

Copy to :

1. M/s. Frontier Informatics Ltd., (Formerly M/s. Frontier Informatics Technologies Ltd) C/o. M/s. Sekhar & Co., 133/4, R.P. Road, Secunderabad.

2. DCIT, Circle-1(3), Hyderabad.

3. CIT(Appeals)-II, Hyderabad.

4. CIT-I, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.