

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1401/Hyd/2016
Assessment Year: 2011-12**

Virchow Biotech Pvt. Ltd.,
Hyderabad.

vs. Dy. Commissioner of Income-
tax, Circle – 3(3), Hyderabad.

PAN – AABCV 2578A

(Appellant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Shri C. Rajeswara Reddy

Date of hearing : 31/07/2019
Date of pronouncement : 31/07/2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order of CIT(A) - 5, Hyderabad, dated 29/07/2016 for AY 2012-13.

2. Brief facts of the case are, the assessee is a company in which the public are not substantially interested and is engaged in manufacture and sale of high value of biological products. For the assessment year 2011-12, it filed its return of income on 28.9.2011 declaring loss of Rs. 2,63,38,914/-. The AO completed the assessment u/s 143(3) on 28/02/2014 determining the total income of the assessee at Rs. Nil by making an addition of Rs. 2,75,74,592/- rejecting the claim of the assessee u/s 35(2AB) on the ground that the assessee has not furnished certificate in Form 3CK and 3CM before him.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) with a delay of 321 days, for which filed a condonation petition stating therein that the main reason for the delay was on account of the fact that the matter was not immediately attended by the Accounts Department due to pre-occupation of work.

4. The CIT(A) after considering the submissions of the assessee as well as discussing the issue of delay at length with various case law, held that the cause of substantial justice would not be served by condoning the inordinate delay of 321 days, for which no cogent reason has been given and accordingly, dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the learned Commissioner of Income-Tax (Appeals) is erroneous both on facts and in law.

2. The learned Commissioner of Income-Tax (Appeals) erred in dismissing the appeal in limine without condoning the delay in filing the appeal.

3. The learned Commissioner of Income-Tax (Appeals) ought to have considered the fact that the delay in filing the appeal is for the reasonable cause as explained in the petition and, therefore, ought to have condoned delay.

4. The learned Commissioner of Income-Tax (Appeals) erred in confirming the assessment made by the Assessing Officer without considering the submissions made before him.

5. Any other ground that may be urged at the time of hearing.”

6. Considered the rival submissions and perused the material on record. In the grounds of appeal, the assessee contended that the CIT(A) dismissed the appeal in limine without condoning the delay in filing the appeal and observed that assessee has filed petition for condoning the delay for 30 days only, but, we noticed that assessee has filed petition for condoning the delay for 323 days. Due to

oversight, CIT(A) has not considered the above petition. It is pertinent to note that the condonation petition was also reproduced by Id. CIT(A) in his order at page 4. In our view, the delay in filing the appeal before the CIT(A) is condonable and accordingly condoned. Similar issue in assessee's own case came up for consideration before this Bench in AY 2012-13, the same was remitted to AO for de-novo consideration. For the sake of clarity, we reproduce the findings of the coordinate bench below:

"7. Considered the rival submissions and perused the material on record. On perusal of correspondence made by the assessee with the Ministry of Science and Technology, we notice that the issue is pending with the Ministry for approval. We do agree with the AO that the Ministry has to approve the actual expenditure incurred by the assessee in order to allow the weighted deduction. We, therefore, remit the matter back to the file of the AO with a direction to re-do the assessment de-novo after the assessee submits the approval from the competent authority. Even the AO can follow up with the Ministry in this regard. The assessee is directed to pursue the matter with the Ministry for approval diligently. Accordingly, the grounds raised by the assessee are treated as allowed for statistical purposes."

Following the said decision, we remit the issue back to the file of the AO with a direction to decide the issue in line with the directions of the ITAT in AY 2012-13.

7. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open Court on 31st July, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st July, 2019

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4.	<i>Pr. CIT – 5, Hyderabad</i>
5.	<i>The DR, ITAT, Hyderabad</i>
6.	<i>Guard file</i>