

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.3002/Chny/2018**
निर्धारण वर्ष /**Assessment Year: 2004-05**

M/s.Youvan Cosmaceuticals &
Consultancy,
No.8, Sterling Road,
Nungambakkam,
Chennai-600 034.

Vs. The Asst. Commissioner-
of Income Tax,
Circle-XV,
Chennai.

[PAN: AAIFY 4464 A]
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.S.Sridhar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr. R.Clement Ramesh-
Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 01.08.2019

घोषणा की तारीख /Date of Pronouncement

: 01.08.2019

आदेश / O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the assessee against the Order of the Commissioner of Income Tax (Appeals)-4, Chennai, in ITA No.31/2017-18/AY 2004-05/CIT(A)-4 dated 19.09.2018 for the AY 2004-05.

2. Shri R.Clement Ramesh Kumar, Addl.CIT, represented on behalf of the Revenue and Shri S.Sridhar, Adv., represented on behalf of the assessee.

3. It was submitted by the Ld.AR that the Ld.CIT(A) had dismissed the assessee's appeal without condoning the delay of 11½ years. It was a submission that the issue arose on account of the fact that when the assessee's appeal for the AY 2005-06 was disposed off by the Tribunal, the Tribunal had given a specific finding that the AO could not have applied the provisions of Sec.94(7)(b) of the Act which was amended w.e.f. 01.04.2005 by the Finance (No.2) Act, 2004 for the AY 2004-05. On account of this finding by the Tribunal in its order in ITA No.206/Mds/2017 dated 31.05.2017 for the AY 2005-06, the assessee had filed the appeal against the Assessment Order for the AY 2004-05 on 20.09.2017. It was a submission that it was only on account of the findings of the co-ordinate Bench of this Tribunal in the assessee's own case for the AY 2005-06 that the assessee had been compelled to file the appeal against the Assessment Order for the AY 2004-05. It was a prayer that the Ld.CIT(A) may be directed to dispose off the appeal of the assessee on merits after condoning the delay. It was a submission that when substantial justice is pitted against technicality then technicality must stand down, as has been held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst.Katiji & Ors., reported in 167 ITR 471 (SC).

4. In reply, the Ld.DR submitted that there should be finality of the proceedings. The Assessment Order for the AY 2004-05 having reached its finality, it was not open to the assessee to challenge the same, the delay should not be condoned especially in view of the fact that the delay is nearly 11 ½ years.

5. We have considered the rival submissions.

6. A perusal of the facts in the present case clearly shows that the assessee's appeal for the AY 2005-06 has been adjudicated by the Tribunal by an order dated 31.05.2017. In the said order, there is a reference to the AY 2004-05 as also an orbiter finding for the AY 2004-05. This being so, it cannot be said that the assessee has filed the appeal for the AY 2004-05 as an afterthought. It is admittedly only on account of the said finding that the assessee has filed the appeal as there is no other alternative remedy available to the assessee. This being so, as it is noticed that the delay issue is a technical issue and the delay is not on account of lethargy on the part of the assessee or on account of any malafide reasons. This being so, applying the principles laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst.Katiji & Ors., referred to supra, the delay in filing of the appeal stands condoned. As the Ld.CIT(A) has not adjudicated the issues on merits, the issues in this appeal are restored to the file of the Ld.CIT(A) for adjudication on merits.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 01st August, 2019 in Chennai.

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 01st August, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF