

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.713/Bang/2020
AssessmentYear:2014-15

Unicity Health Private Limited No.9/1, Ulsoor Road Bangalore 560 042 <b>PAN NO : AABCU2096E</b>	<b>Vs.</b>	ITO Ward 15(3)(4) Mumbai Jurisdictional AO : ITO Ward-7(2)(1), Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri B.R. Sudheendra, A.R.
<b>Respondent by</b>	:	Shri Kannan Narayanan, D.R.

Date of Hearing	:	30.03.2021
Date of Pronouncement	:	20.04.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the order dated 13.9.2019 passed by Ld. CIT(A)-7, Bengaluru and it relates to the assessment year 2014-15.

2. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the disallowance of business promotion expenses of Rs.4.04 crores claimed by the assessee.

3. The appeal of the assessee is barred by limitation by 363 days. The assessee has filed a petition before the bench praying for condonation of delay. In the petition, it is stated that the assessee

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is having accumulated loss of Rs.13.75 crores and losses incurred during the year under consideration was Rs.7.99 crores. Further, it was in its initial years of operation. Hence, effectively, there was no tax liability on account of disallowance of business promotion expenses. Hence, the assessee did not file appeal against the order passed by Ld. CIT(A). However, subsequently, the assessee was advised that it would be liable for penal action u/s 271(1)(c) of the Income-tax Act,1961 ['the Act' for short] despite there being no tax liability on the total income. Accordingly, it was advised to file the appeal challenging the order passed by Ld CIT(A). Accordingly, the assessee has filed this appeal belatedly. The Ld. A.R. submitted that the assessee did not prefer appeal on account of wrong notion and lack of proper professional advice. Accordingly, he prayed that the delay may kindly be condoned. The Ld A.R placed his reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of CIT Vs. Prakash B. Nichani. (ITA No.399/2009 dated 18-08-2015). In the above said case, the assessee filed appeal against original assessment order belatedly, i.e., only after the revision order passed by Commissioner u/s 263 of the Act. The same has resulted in a delay of 331 days. The Tribunal condoned the delay and the order of Tribunal was challenged by the revenue before Hon'ble High Court of Karnataka. The jurisdictional High Court upheld the view taken by the Tribunal. He further submitted that the Hon'ble High Court of Karnataka has observed in the case of Shri C. Ganesh Mallya (ITA No.1009 of 2017 dated 08<sup>th</sup> April, 2019) that *"Merely holding technicalities against the assessee is not justified and fair. The reason for delay would also have to be considered"*. He also placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Collector Land Acquisition vs. Mst. Katiji & Ors.(1987 AIR 1353). The Ld. A.R. further submitted that the assessee would not stand to gain by not filing

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appeal wantonly. Accordingly, he submitted that there was reasonable cause for the assessee in not filing appeal in time. Accordingly, he prayed that the delay may kindly be condoned.

4. On the contrary, the Ld. D.R. strongly opposed the petition filed by the assessee. He submitted that the assessee has not given any valid reason to show that the delay was on account of reasonable cause.

5. We heard the parties on this preliminary issue and perused the record. Having regard to the submissions made by the assessee in the petition and considering the facts prevailing in the present case, we are of the view that there is sufficient cause for the assessee in not filing appeal before the Tribunal in time. Accordingly, we condone the delay and admit the appeal for hearing.

6. The facts relating to the issue before us are discussed in brief. The assessee company is engaged in the business of selling health based wellness products through multi-level marketing. The assessee is a group company of Unicity Group, USA. During the course of scrutiny proceedings, the A.O. noticed that the assessee has claimed business promotion expenses of Rs.4.04 crores. On questioned, the assessee explained that its business has started picking up in 2013-14 onwards and hence, in order to improve the business further, several incentive schemes like Dubai Reward Trip, Bangkok Reward Trip, Goa Reward Trip were organized in 2014. The A.O. wanted to apply bright line test. He also observed that the assessee has not furnished any documentary evidence except a chart giving the breakup details of business promotion expenses and certain comments. The A.O. also observed that the assessee

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has failed to furnish copies of invoices or actual nature of expenses. Further, this expenditure has not helped the cause of business also by way of increase in sales. Accordingly, the A.O. expressed the view that it is not clear as to whether these expenses have helped the assessee to improve its business. Accordingly, the A.O. disallowed the entire claim of Rs.4.04 crores. The Ld. CIT(A) also confirmed the same.

7. The Ld. A.R. submitted that the A.O. has passed the impugned assessment order on 30.12.2016. The assessee received notice u/s 142(1) of the Act through E-Mail only on 19.12.2016. The assessee furnished the reply through E-Mail on 21.12.2016 and also another reply was sent on 28.12.2016. In between the assessee appeared personally before the A.O. on 26.12.2016 also. The assessee has furnished the details of breakup of business promotion expenses in its reply dated 21.12.2016. The assessee has also furnished sample invoices of business promotion expenses in its reply mailed on 28.12.2016. However, it is not clear as to whether the A.O. has examined all these details before coming to the conclusion of disallowance of expenses. The Ld. A.R. further submitted that the fact remained that these expenses have been incurred for the purpose of business and hence, the question of applying bright line test will not arise. Further, it is not the requirement of law that the expenses should compulsorily help the assessee to achieve higher sales. He submitted that the assessee would be incurring business promotion expenses only on expectation of higher sales. If the expectation fails, it would not lead to disallowance of expenses. Accordingly, he submitted that the Ld. CIT(A) was not justified in confirming the disallowance.

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8. The Ld. D.R., on the contrary submitted that the assessee has failed to furnish various details called for by the assessee. He submitted that it is the responsibility of the assessee to prove the expenses.

9. We heard the rival contentions and perused the record. We notice that the assessee has furnished the details of expenses in its reply sent through e-mail on 21.12.2016. It has also furnished copies of sample invoices in its e-mail sent on 28.12.2016. As noticed earlier, the A.O. has completed the assessment on 30.12.2016. It is pertinent to note that the entire exercise of asking queries have started only on 19.12.2016. From the assessment order, it is not clear as to whether the A.O. has properly examined the replies furnished by the assessee.

10. Admittedly, the business promotion expenses have been incurred for the purpose of improving sales of the assessee. There is merit in the submission of Ld. A.R. that the question of applying bright line test does not arise in the facts of the present case. Every businessman would be incurring advertisement and business promotion expenses in anticipation of higher sales in accordance with his sales promotion strategy. To his bad luck, if the advertisement and business promotion expenses do not fructify, the same should not lead to disallowance of expenses, which have otherwise been genuinely incurred by the assessee, i.e. the said expenses would continue to be considered as expenses incurred wholly and exclusively for the purpose of business.

11. In any case, in the instant case, the A.O. has not examined the details furnished by the assessee. Accordingly, we are of the view that this issue requires fresh examination at the end of the

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A.O. Accordingly, we set aside the order passed by the Ld. CIT(A) and restore this issue to the file of the A.O. for examining it afresh by duly considering the information and explanations furnished/that may be furnished by the assessee. After affording adequate opportunity of being heard to the assessee, the A.O. may take appropriate decision in accordance with law.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> Apr, 2021

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 20<sup>th</sup> Apr, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.