

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND**

SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No: 1875/Chny/2018

निर्धारण वर्ष/Assessment Year : 2008-09

M/s. Arihant E-soft Limited,
50, 1st Main Road,
CIT Nagar, Nandanam,
Chennai – 600 035.

Assistant Commissioner of Income
Vs. Tax,
Company Circle -1(2),
Chennai.

[PAN: AAACA 7365D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Ms. R. Anita, JCIT

सुनवाईकीतारीख/Date of Hearing

: 28.06.2021

घोषणाकीतारीख/Date of Pronouncement

: 28.06.2021

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- I, Chennai in ITA No. 237/2013-14 dated 26.03.2014 for the assessment year 2008-09.

2. M/s. Arihant E-soft Limited, the assessee, filed this appeal with a delay of 3 years 353 days and pleaded to condone the delay. The case was heard through video conferencing. The Ld. AR submitted that the order of the Ld. CIT(A) dated 26.03.2014 was received by the assessee on 17.04.2014. Since, the Ld. first Appellate Authority has passed the order on total misappreciation of the facts, a Miscellaneous Petition was filed before the first appellate authority on 04.08.2014. The Ld. first appellate authority heard the case on 17.10.2014. However, no orders were received till date. Meanwhile, the department was pressurizing for recovery of demand. In the circumstances, on due legal advice, this appeal was filed before the Hon'ble Tribunal with a delay of 3 years 353 days. The delay in filing the appeal was due to the reason that the assessee preferred an alternate remedy and that it was under bonafide belief that its Miscellaneous Petition would be allowed by the first appellate authority. Therefore, the Ld. AR pleaded that the delay in filing the appeal is neither wilful nor wanton and hence the delay in filing the appeal may be condoned. Per contra, the Ld. DR opposed the contentions submitting that there is inconsistency between the affidavits filed by the assessee dated 04.06.2018 & 24.06.2021. In this regard, the Ld. AR submitted that in the first affidavit submitted by the assessee, inter alia, it was pleaded that the assessee lost records including office records during floods in December, 2015, some appeal documents got mixed up with other submerged documents and with great difficulty they were traced on 02.06.2018.

However, now the assessee has found other documents, based upon which the latest affidavit was filed. The Ld. AR submitted based on the copy of documents in the paperbook that the essential facts are that the assessee filed the Miscellaneous Petition on 04.08.2014 itself before the Ld. CIT(A) against the impugned appeal order and the Ld. Appellate Authority posted the case for hearing on 17.10.2014 and the case was heard by the first Appellate Authority. The assessee was expecting that due order would be passed by the Ld. CIT(A). However, the Ld. CIT(A) has not passed any order till date and when the Department pressurized for the recovery of demand in June, 2018 and on due legal advice, the assessee filed this appeal before this Hon'ble Tribunal seeking condonation. The Ld. AR pleaded that since the Ld. CIT(A) without appreciating the facts and circumstances passed the impugned order and on the same issue for the assessment years 2006-07 & 2007-08, the orders passed by the Ld. CIT(A) are in favour of the assessee on the impugned issues, the substantial issues in the assessee's case are to be decided on merits. Therefore, the Ld. AR pleaded that the delay in filing the appeal is neither wilful nor wanton. Therefore, in the interests of substantial justice, the delay be condoned and the appeal be decided on merits.

3. We heard the rival submissions and gone through the relevant material. It appears that the assessee was not careful in collecting the entire facts and advancing them in the first affidavit. The undisputed facts in the assessee's

case are that the assessee after the receipt from the order of the first appellate authority filed the Miscellaneous Petition on 04.08.2014 pleading, inter alia, that the Hon'ble Commissioner of Appeals, dismissed the petitioner's appeal for the reason that the appellant has not produced the lease agreement between M/s. Sanmina-SCI India Pvt Ltd and Owners M/s. Wavoo Magdoom Realtors, however the appellant had produced all other documents in proof of its claim of being only rented the infrastructure facility to M/s. Sanmina-SCI India Pvt. Ltd., and had never leased any immovable assets and enclosed the copies of lease agreement dated 01.10.2003 between M/s. Sanmina-SCI India Pvt Ltd and Owners M/s. Wavoo Magdoom Realtors for lease of premises, that grave injustice would be caused to the petitioner if the appeal is not recalled and heard on merits. Thus, the assessee stated that it did not lease any premises to any party, as they were never owners of any building or premises nor sub-leased any leased premises, they had only leased its own movable assets. Further the company's balance sheet also does not have any immovable property to lease and was therefore neither wilful nor wanton in submitting the lease agreement between the third parties. Thus, it prayed the Hon'ble Commissioner of Appeals to recall his order dated 26.03.2014 in ITA No. 237/2013-14.

3.1 The Ld. CIT(A) also vide his notice dated 17.10.2014 posted the case for hearing on 29.10.2014. The assessee submits that the case was heard by the

Ld. CIT(A) but he has not passed the impugned order. When the department pressurized for recovery of demand in June, 2018, the assessee on due legal advice filed the impugned appeal before this Tribunal. Therefore, assessee's submissions that the delay in filing this appeal was due to the reason that it had preferred an alternate remedy and it was under bonafide belief that its Miscellaneous Petition would be allowed by the first appellate authority appears reasonable and hence the case deserves condonation. Further, the assessee's submission that non-consideration of the lease agreement dated 01.10.2003 would cause grave injustice to the assessee in the light of the favourable orders of the first appellate authority in the assessee's case for the assessment year 2006-07 and 2007-08 on the same issues are involved with substantial justice. When the substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Therefore, after considering the entire facts and circumstances, we find that the delay in filing the appeal needs to be condoned and accordingly condone the delay.

4. The Ld. AR submitted that the assessee was engaged in the business of software development. It had originally entered into an agreement with Mr. Sahul Hameed & others for taking on rent a building consisting of three floors. This building was used by the assessee for its business of software development upto September, 2003. When it discontinued its business of

software development in the year 2003 itself, it has sub-letted the furniture and wooden partitions in that building to M/s. Sanmina-SCI India Private Limited and received rental income and admitted the same as infrastructural income. While making the assessment, the Assessing Officer without appreciating the fact that the assessee had already handed over the building to Mr. Sahul Hameed & others, who subsequently entered a rental agreement for the building with the Lessee, proceeded to assess the income holding as if the assessee has sub-let the rental leased premises and assessed the income under the head "other sources" dis-regarding the assessee's claim that it should be charged as income from business. The assessee's claim were considered in its favour by the Id. CIT(A) for the assessment years 2006-07 & 2007-08. Therefore, the Ld AR pleaded that the issues in the appeal may be remitted back to the AO for due consideration of facts and decide the issues in accordance with the orders of the Ld. CIT(A) in the assessee's case for assessment years 2006-07 & 2007-08. Per contra, the Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions and gone through the relevant material. Since, the facts in this case has not been properly appreciated by the lower authorities, we deem it fit to remit the issues back to the AO for a fresh decision. The assessee shall lay relevant material in support of its contention before the AO and comply with the requirements of the AO in accordance with

law. The AO on due consideration of such material including decision of the Ld. CIT(A) in the assessee's case in the earlier years and after affording adequate opportunity to the assessee decide the issues in accordance with law.

6. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 28th June, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 28th June, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF