

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 1247 & 1111/H/2015 Assessment Year: 2005-06		
Optiserv Muskan Services Pvt. Ltd., Hyderabad.  PAN - AAACO 59993P	Vs.	1) Dy. Commissioner of Income-tax, Circle - 16(3), Hyderabad. 2) ITO, Ward - 16(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri P. Murali Mohan Rao
Revenue by:		Shri Y.V.S.T. Sai
Date of hearing:		21/12/2021
Date of pronouncement:		22/12/2021

**ORDER**

**PER L.P. SAHU, A.M.:**

ITA No. 1247/Hyd/2015

This appeal filed by the assessee is directed against CIT, Hyderabad dated 22/03/2021 for AY 2005-06 involving proceedings u/s 263 of the Income Tax Act, 1961 ; in short "the Act".

2. On perusal of record, we find that the appeal filed by the assessee before the ITAT against the order of CIT is barred by limitation of 1983 days. To this effect, the Id. AR of the assessee filed a petition for condonation of the said delay along with an affidavit wherein it was stated as under:

I, Girish Gelli, Director of Optiserv Muskan Services P Ltd., Cyber Towers, Madhapur, Hyderabad hereby state that, I am acquaint with the facts of the case in respect appeal which has been filed with the ITAT, Hyderabad in respect of the Assessment year 2005-06, and I state that:

The order u/s 263 of the Act in respect of the Assessment year 2005-06 has been received on 30.03.2010 and the appeal could not be filed in time as it had been misplaced by one of our staff in my absence as I was not in station at that time and the same could be traced out and the appeal could be filed on 02-11-2015 with a delay of 1983 days as the appeal was due for filing on 29.05.2010 and instead of that the same has been filed on 02-11-2015. The delay of 1983 days in filing of the appeal may please be condoned and the appeal may please be considered.

In view of the above reasons, the delay 1983 days may please be condoned and the appeal may please be considered due to circumstances beyond my control.

2.1 On perusal of the above petition for condonation, we observe that there is no plausible and cogent reason for filing the appeal belatedly with a delay of 1983 days before the ITAT. The delay should be condoned if the reasons are cogent in filing the appeal belatedly. The appellant has

stated that the order was received on 30/03/2010, but, it was misplaced by one of its staff, which is a vague reason. The assessee was aware about the service of the order and if the order was misplaced/lost, the assessee can obtain a certified duplicate copy immediately. It clearly shows that the assessee had ignored his duty to file the appeal within the stipulated time as per law. Therefore, the delay is not condoned and rejected the petition filed for condonation of delay along with affidavit.

ITA NO. 1111/HYD/2015

3. This appeal filed by the assessee is directed against CIT(A), Hyderabad's order dated 14/07/2015 for AY 2005-06 involving proceedings u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 ; in short "the Act".

4. The CIT(A) dismissed the appeal of the assessee when the assessee preferred an appeal before him against the order of AO passed u/s 143(3) r.w.s. 263 of the IT Act by observing as under:

*"3. As the Commissioner of Income tax and the Commissioner of Income tax (Appeals) are the equal authorities, an appeal against the assessment completed as per the directions of the Commissioner of Income tax u/s. 263 of the Act could not be decided by the Commissioner of Income tax (Appeals). Accordingly, the appeal is treated as dismissed for statistical purposes."*

5. Before us, the ld. AR submitted that the CIT(A) has not decided the appeal on merits and dismissed the appeal on the ground that the same could not be decided by him as the appeal filed against the assessment order completed as per the direction of the CIT u/s 263 of the Act.

6. The ld. DR, on the other hand, relied on the order of the CIT(A).

7. After considering the rival submissions and perusing the material on record as well as the orders of the revenue authorities, we are of the view that the CIT(A) ought to have decided the appeal of the assessee as per the provisions of section 250&251 of the Act. We also observe that the AO has passed the order u/s 143(3) r.w.s. 263 of the Act, and therefore, it is an appealable order before the

CIT(A) u/s 246A of the Act. Therefore, to meet the ends of justice, we remit the matter back to the file of the CIT(A) with a direction to decide the appeal on merits after providing reasonable opportunity of being heard to the assessee in the matter. The assessee is directed to substantiate its case by way of proper documentary evidence before the CIT(A) without seeking any adjournments. Accordingly, the grounds raised by the assessee are treated as allowed for statistical purposes.

8. In the result, appeal in ITA No. 1247/Hyd/2015 is dismissed and the appeal in ITA No. 1111/Hyd/2015 is allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 22<sup>nd</sup> December, 2021.

**Sd/-**  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 22<sup>nd</sup> December, 2021.

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Copy to :

1	<i>M/s Optiserv Muskan Service Pvt. Ltd., C/o P. Murali &amp; Co., CAs, 6-3-655/2/3, 1<sup>st</sup> Floor, Somajiguda, Hyderabad - 82</i>
2	<i>DCIT, Circle - 16(3), Hyderabad.</i>
3	<i>ITO, Ward - 16(1), Hyderabad</i>
4	<i>CIT-IV, Hyderabad</i>
5	<i>CIT(A) - 4, Hyderabad.</i>
6	<i>ITAT, DR, Hyderabad.</i>
7	<i>Guard File.</i>