

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री प्रशांत महर्षि, लेखा सदस्य के समक्ष ।

BEFORE SRI VIKAS AWASTHY, JM AND SRI PRASHANT MAHARISHI, AM

आयकर अपील सं./ ITA No. 1862/Mum/2020

(निर्धारण वर्ष / Assessment Year 2006-07)

आयकर अपील सं./ ITA No. 1863/Mum/2020

(निर्धारण वर्ष / Assessment Year 2007-08)

आयकर अपील सं./ ITA No. 1864/Mum/2020

(निर्धारण वर्ष / Assessment Year 2008-09)

आयकर अपील सं./ ITA No. 1865/Mum/2020

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 1866/Mum/2020

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 1867/Mum/2020

(निर्धारण वर्ष / Assessment Year 2011-12)

Sterling Biotech Limited [Under Liquidation] 43, Atlanta Building, Nariman Point, Mumbai-400 021	बनाम / Vs.	The Asst. Commissioner of Income Tax, Central Circle- 2(4), Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCS1946H		

अपीलार्थी की ओर से / Appellant by	:	Shri Vijay Mehta, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajesh Damor, DR

सुनवाई की तारीख / Date of hearing:	23.12.2021
घोषणा की तारीख / Date of pronouncement:	04.01.2022

आदेश / O R D E R

Per Bench:-

01. These seven appeals are filed by the one assessee i.e. Sterling Biotech Ltd for Assessment Year 2006-07 to 2012-13 against the identical order passed by the Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'the CIT (A)'] for all these years, Where appeals filed by assessee are dismissed by the Id CIT (A) as Non maintainable as those were delayed rejecting the application of condonation holding that there is no sufficient cause of such delay. These appeals involve common grounds and same arguments are made by both the sides and therefore, disposed of by these common order.

02. Seven Appeals are :-

- i. ITA No. 1862/Mum/2020 for Assessment Year 2006-07 is filed against the order of CIT(A) dated 29.07.2020, wherein the order passed by the Assistant Commissioner of Income Tax, CC-10 (Now CC2/4). The learned Assessing Officer passed under section 143(3) of the Act on 31.03.2014. The appeal of the assessee against that order is dismissed as not admitted.
- ii. ITA No. 1863/Mum/2020 for Assessment Year 2007-08 is filed against the order of CIT(A) dated

- 30.07.2020, wherein the assessee filed appeals against the order dated 31.03.2014 passed by the learned Assessing Officer under section 153A read with section 143(3) of the Act, dismissing it as not admitted.
- iii. ITA No. 1864/Mum/2020 for Assessment Year 2008-09 is filed against the order passed by the learned Assessing Officer on 31.03.2014 and appeal of the assessee is dismissed as not admitted.
 - iv. ITA No. 1865/Mum/2020 for Assessment Year 2009-10 is filed against the order of the learned CIT(A) dated 30.07.2020, wherein identical order passed by the learned Assessing Officer on 31.03.2014. The appeal of the assessee was dismissed as not maintainable.
 - v. ITA No. 1866/Mum/2020 for Assessment Year 2010-11 is filed against the order of the learned CIT (A) dated 30.07.2020, wherein identical order passed by the learned Assessing Officer on 31.03.2014 was held to be not maintainable, hence dismissed.
 - vi. ITA No. 1867/Mum/2020 for Assessment Year 2011-12 is filed against the order of the learned CIT (A) dated 30.07.2020, wherein appeal against the assessment year passed by the learned Assessing

Officer dated 31.03.2014 was dismissed as not maintainable.

vii. ITA No. 1868/Mum/2020 for Assessment Year 2012-13 is filed against the order of the learned CIT(A) dated 30.07.2020, wherein the appeal of the assessee filed against the assessment order passed by the learned Assessing Officer on 31.03.2014 was held to be not maintainable and hence dismissed.

03. As stated by parties that facts and issues involved in all these seven appeal are common and identical, we set out facts for AY 2006-07 and apply decision arrived in that appeal to the other appeals. ITA No. 1862/Mum/2020 for Assessment Year 2006-07. The brief facts of the case shows that the assessee company is engaged in the business of manufacture and dealer of chemicals, filed its return of income on 30.11.2006 declaring total income of ₹37,73,44,953/- and the book profit under section 115JB was also disclosed at ₹151,34,9970/-. The action under section 132 of the Income-Tax Act took place in the case of the assessee along with other group entities and therefore the notice under section 153A of the Act was issued on 09.01.2012. In response, assessee furnished return on 29.02.2012 declaring income of ₹38,16,47,426/- as per normal provisions and the book profit income of ₹151,12,970/-.

04. The learned Assessing Officer made an addition of ₹11,08,53,743/- on account of undisclosed sale of DCP, DCP Lumps and other bye products. Accordingly, he computed the total income of the assessee at ₹49,25,01,169/-.
05. Aggrieved, by that order, the assessee challenged the same before the learned Commissioner of Income Tax (Appeals).
06. The learned CIT (A) noted that assessee has filed the appeal before him, which was late by 23 months. Assessee filed petition for condonation of delay on 30th March 2016 showing the reason that delay may be condoned as it has been caused for sufficient reasons. The learned CIT(A) obtained the remand report and there after rejected the condonation application of the assessee stating that assessee has not offered any reply except that assessee did not want to file appeal initially as it was under bonafide belief that no penalty would levied. However, since the Assessing Officer levied the penalty also took action in subsequent years, assessee has filed this appeal. He also mentioned that significantly of large period of about 6 years delay in the filing of the appeal. Therefore, according to him, the appeal of the assessee is not maintainable before of the delay. Thus, the appeal filed by the assessee was held to be not maintainable and hence, dismissed. The assessee is aggrieved with that order and has preferred the appeal before us.

07. At the time of hearing, the learned authorized representative filed a paper book that states that National Company Law Tribunal (NCLT) has passed an order on 11.06.2018, wherein an interim resolution Professional has been appointed under IBC-2016. He referred to Para No.13 of that order to show that the petition was filed on 22.02.2006 and order is passed on 11.06.2008, whereas the order of the learned CIT (A) is passed on 29.07.2020. He further referred to the order of the National Company Law Appellate Tribunal (NCLAT) in the above case dated 18.11.2019, which clearly shows that resolution process is continuing. He therefore submitted that the learned CIT (A) could not have passed the order against the assessee company during the continuous resolution process. He specifically referred to provision of Section 14 of IBC-2016. Even otherwise, he submitted that the delay caused in these appeals is merely 23 months learned CIT (A) has wrongly stated that the delays in filing of appeals are for more than 6 years. Thus, he submitted that order of the Id CIT (A) is not sustainable in law. He also submitted that the facts are identical in all these appeals.
08. The learned Departmental representative vehemently submitted that there is no infirmity in the order of the learned CIT (A) when assessee has filed appeal belatedly without any sufficient cause for causing the delay.

09. During the course of hearing, firstly, on 20.12.2021 the Bench raised the query that as per submissions of the learned authorized representative, assessee has gone into corporate insolvency resolution process and interim resolution professional has been appointed by NCLT but these appeals have been filed by one of directors of the company and whether such appeals are maintainable. It was also asked whether any instructions are obtained from the IRP that such director was appointed for pursuing this appeal. The learned AR requested a short time to verify about the detail. On the next date of hearing on 23.12.2021, the learned AR submitted that in terms of the order of the NCLT dated 11.06.2018; the boards of directors were suspended and interim resolution process started by appointing IRP. However, the present appeals were filed under the signature of the director at the insistence of the IRP. To support his contentions, He submitted copies of e-mails and letter dated 22.12.2021 of IRP stating that the director, who signed appeals, was authorized to file the appeals at that time. Therefore, his submission was that the Director, who signed these appeals was authorized by IRP to present this appeals before ITAT. He further submitted another letter dated 20.12.2021, wherein he submitted revised from No.36, wherein the appeal was presented by the official liquidator of the assessee company. He submitted that Insolvency resolution process is over and company has been referred for liquidation by

appointing official liquidator. He therefore submitted that even otherwise, now defect is cured and the appeal of the assessee before this Tribunal is filed in proper manner duly signed by the official liquidator and therefore it should be admitted.

10. The learned Departmental Representative also agreed to the same however, opposed it supporting the order of the learned CIT (A) in not admitting the appeals of the assessee before him.
11. We have carefully considered the rival contentions. We note that assessee has replaced Form No.36, which is now verified by the official liquidator. Therefore, the appeals of the assessee are now rectified and are maintainable before us.
12. On the issue, we find that there was a delay of 23 months in filing of the appeal before the learned CIT(A), the assessee did not file appeal in order to buy peace of mind and to avoid penalty. Further, when the assessment orders in case of other assessment years were also framed on the similar line and when the penalty was levied by the Assessing Officer, the assessee preferred the appeal. It caused delay of almost 23 months and therefore, the assessee preferred the application for condonation of delay, which was rejected by the learned Commissioner of Income Tax (Appeals). We find that even the order of the learned CIT (A) in not admitting the appeal of the assessee is an

order passed in contravention of Section 14 of the Insolvency and Bankruptcy Code 2016. This is for the reason that the section 14 prohibits even continuation of proceedings during moratorium against the corporate debtor. In view of this, the order of the learned CIT(A) in not admitting the appeal of the assessee is in contravention of Section 14 of the IBC and therefore not sustainable. Thus, we allow the appeal of the assessee with respect to the ground No.1 of the appeal and restore these appeals back to the file of the learned CIT (A) to decide the issue afresh. He also directed now that as an official liquidator has been appointed, the respective notice for the hearing etc are also requiring to be addressed to the official liquidator. The assessee is also directed to place before the learned CIT (A) the revised form No.35 duly signed by the official liquidator. This may be taken on record by the learned CIT(A) and then decide the issue of condonation of delay in filing of these appeals of 23 months after granting proper opportunity of hearing . If the appeals are admitted, then to decide the issue on the merits of the case, after granting opportunity of hearing in accordance with the law.

13. The facts of these other six appeals are identical. Accordingly, we allow ground No.1 of the appeal of all these appeals and restore them back to the file of the learned CIT (A) to decide the issue afresh with similar direction.



14. In the result, all these six appeals filed by the assessee are allowed with above direction for statistical purposes.

Order pronounced in the open court on 04.01.2022

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.01.2022

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(प्रशांत महर्षि / PRASHANT MAHARISHI)

(लेखा सदस्य / ACCOUNTANT MEMBER)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

व. निजी सचिव/ Sr. Private Secretary
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai