

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.490/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2019-20)

Tenovia Solutions Pvt. Ltd. No. 22, Flat K, Ground Floor, Tirupathi Apartments, Second Street, Venus Colony, Alwarpet, Chennai – 600 018.	बनाम/ Vs.	ADIT CPC, Bangalore.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCT-4284-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri ARV Sreenivasan (Addl. CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	11-05-2022
घोषणा की तारीख / Date of Pronouncement	:	11-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2019-2020 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 16.09.2021 in the matter of intimation issued by Centralized Processing Center (CPC), Bengaluru u/s 143(1) on 03.06.2020. At the

time of hearing of appeal, none appeared for assessee. However, upon perusal of grounds of appeal, it transpires that the assessee has been denied carry-forward of losses in view of the fact that the return of income was filed just 12 minutes and 31 seconds past midnight which was the deadline for filing of return of income. The assessee has attributed the delay to technical snag and last rush-hours on the Income Tax Portal. The Ld. Sr. DR submitted that late filing of return of income would disentitle the assessee to claim carry-forward of losses. The proper course for the assessee would be to seek condonation from appropriate authority u/s 119(2)(b) of the Act. After considering the submissions and the impugned order, our adjudication would be as under.

2. The assessee suffered business-loss during the year and claimed carry-forward of losses for Rs.57,69,223/-. However, CPC has reduced the same to Rs.63,849/-. This was due to the fact that the last date of filing return of income was 31.10.2019. However, the return was filed 12 minutes and 31 seconds past midnight and hence the filing date was reckoned as 01.11.2019. In the statement of facts filed during appellate proceedings, the assessee submitted that it was trying to upload the return on the website of Income Tax Department for 21 hours on 31.10.2019. However, due to rush and technical snag on the website, the delay of 12 minutes and 31 second occurred and accordingly, the return was reckoned as belated return which ultimately led to denial of carry-forward of losses. There was no willful and mala-fide intent to make a default and to forgo the benefit of carry-forward of losses. The cause of delay was genuine. However, Ld. CIT(A) observed that as per CBDT Circular No. 9/2015 dated 09.06.2015, specified Income Tax

Authorities were vested with the powers of condonation of such delay u/s 119(2)(b) of the Act. Therefore, the ultimate remedy was to seek condonation before concerned Pr.CIT and the assessee had already filed an application with concerned Pr.CIT which was still pending. Therefore, the benefit of carry-forward of losses could not be allowed to the assessee. Aggrieved, the assessee is in further appeal before us.

3. Upon careful consideration of factual matrix, we find that Ld. CIT(A) has denied the otherwise eligible claim on mere technicalities completely ignoring the plight of the assessee. It could be seen that the assessee tried to upload the return for 21 hours on 31.10.2019 and ultimately got successful in filing the return of income past midnight and accordingly, the delay of 12 minutes and 31 second occurred due to which the return of income was tagged as belated return. We fail to understand as to how the assessee could be termed as defaulter in such a case and what the assessee would have gained by filing the return of income with such a minor delay. It is also not the case of the revenue that the assessee is not entitled for carry forward of losses.

4. On the given facts, the decision of Hon'ble Madras High Court in **Regen Infrastructure & Services (P.) Ltd. V/s CBDT (68 Taxmann.com 93)** as affirmed by division bench (75 Taxmann.com 135) is squarely applicable to the facts of the case. The Hon'ble Court, under similar circumstances, condoned the delay of one day and held that the petitioner had successfully explained the delay in filing the return on 16.10.2010 instead of 15.10.2010. Further, it is not the case of the respondents that the petitioner is not entitled to claim the carry forward loss under Section 139(3) of the Act. When the petitioner is entitled to claim the carry forward loss under Section 139(3) of the Income Tax Act,

it cannot be stated that the delay in filing the return had occurred deliberately or on account of culpable negligence or on account of mala-fides. Further, the petitioner does not stand to benefit by resorting to delay. In fact, they run a serious risk. Moreover, when the petitioner had satisfactorily explained the delay in filing the said return, the approach of the first respondent should be justice oriented so as to advance the cause of justice. In this case, when the petitioner as a litigant is entitled to claim carry forward loss, mere delay should not defeat the claim of the petitioner. The division bench, while confirming this decision, further held that one should take judicial notice of the fact that uploading of Return requires not only an effort but also consumes sometimes. If the assessee has encountered certain hardship or difficulty in uploading his return, due to a technical-s snag in the website of the Income-tax Department due to the last hour rush of filing of returns, the delay deserves to be condoned. In the present case before us, the assessee stands on a much better footing.

5. Therefore, on the facts and circumstances of the case, we set-aside the impugned order and restore the matter back to the file of Ld. CIT(A) to verify the fact that there was only a minor delay of 12 minutes and 31 seconds in filing of return of income as pleaded by the assessee. If so, the return filed by the assessee would be considered as a return filed u/s 139(1) and the benefit of carry-forward of losses would be allowed in accordance with law.

6. The appeal stands allowed for statistical purposes in terms of our above order.

Order pronounced on 11th May, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 11-05-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF