

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.832/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2018-19)

Nath Industries Ltd. Nath Industries Ltd. 1, Chhateau Windsor Veer Nariman Road, Churchgate, 1 <sup>st</sup> Floor, Mumbai-400020.	<b>बनाम/</b> Vs.	ACIT, Circle-1(3)(1) 5 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR7243K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri N. R. Agarwal
Revenue by:	Shri Chetan M. Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 26/07/2022

घोषणा की तारीख /Date of Pronouncement: 04/08/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 08.04.2022 for the assessment year 2018-19.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) for not considering the belated revised return of merged entity since the amalgamation order was passed by the Ld. NCLT on 22.08.2019 with retrospective effect from 01.04.2017.

3. Brief facts in respect of ground number one (1) of appeal of the assessee is that two companies (i) M/s Nath Pulp & Paper Ltd and (ii) M/s. Nath Industrial & Chemicals Ltd got merged with assessee company M/s. Nath Industries Ltd. (erstwhile M/s. Rama Pulp & Paper Ltd.) w.e.f. 01.04.2017 as per the order of the Ld. National Company Law Tribunal (NCLT) dated 22.08.2019. Due to the aforesaid fact/development, the assessee filed revised return of income on



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21.12.2020 under receipt no. 859702751211220 in respect of the merged entity; and also filed application before the Ld. CIT City-1 for condonation of delay in filing revised the return on 29.01.2021 and 12.02.2021. It was pointed out by the assessee before AO that the filing of revised return within the due date was beyond the control of assessee as last date of filing revised return expired on 31.03.2019 whereas the Ld. NCLT has passed merger/amalgamation order on 22.08.2019 w.e.f. 01.04.2017. Even though the assessee brought these facts to the notice of the AO, the AO disregarded the same and framed the assessment considering the original return of income filed earlier on 28.08.2018 and made certain addition. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and brought to his notice the omission on the part of AO not to receive the revised return of income of the merged entity despite having explained the reason for non-filing of revised return within due date. However, the Ld. CIT(A) also did not accept the same on technical reasons and held as under: -

“4.0 In ground no.1, the appellant agitates that the Ld AO has erred in making assessment on figures filed in original return and did not consider the belated revised return filed for merged entity and therefore erred in taxing income of Rama Pulp and Papers Limited instead of income or loss of 3 merged companies.

4.1 In this case, two companies M/s. Nath Pulp and Paper Ltd and M/s Nath Industrial and Chemicals Ltd had been merged with assessee company i.e., M/s Nath industries Ltd. (Old Name Rama Pulp and Paper Ltd) w.e.f. 01.04.2017 as per the order dated 22.08.2019 of the Hon'ble NCLT. The appellant filed revised return on 16.01.2021 which was beyond the time allowed u/s 139(5) of the Act.



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Subsequently, on 12.2.2021, it applied before principal commissioner of Income Tax-1 Mumbai for condonation of delay in filing revised return.

4.2 I have gone through the submission of the appellant. In the instant case, the merger of the companies was approved by Hon'ble NCLT on 22.08.2019. By this date, the appellant had no time to revise the return for AY 2018-19 as the last date for filing revised return was 31.03.2019. Subsequently, the appellant has filed the revised return u/s 119 on 21/12/2020 i.e., after a gap of 15 months from the date of order of the Hon'ble NCLT. Thus, it is noted that the appellant company has filed the revised return after a significant delay from the date of the order of the NCLT.

Further, it has applied for condonation of delay in filing of revised return before principal commissioner of Income Tax-1 Mumbai.

4.3 The application for condonation of delay is required to be filed before the appropriate authority in terms with CBDT's circular no9/2015 dated 09.06.2015. The para 2 of the circular reads as under-  
"2. The Principal Commissioners of Income-tax/Commissioners of Income-tax (Pr.CsIT/CsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims is not more than Rs.10 lakhs for any one assessment year. The Principal Chief Commissioners of Income tax/Chief Commissioners of Income-tax (Pr.CCs IT/CCsIT) shall be vested with the powers of acceptance/rejection of such applications/claims if the amount of such claims exceeds Rs.10 lakhs but is not more than Rs. 50 lakhs for any one assessment year. The applications/claims for amount exceeding Rs.50 lakhs shall be considered by the Board."

Accordingly, the appellant is required to ensure that the application for condonation is filed with appropriate authority as per CBDT's circular no9/2015 dated 09.06.2015. After the approval of the appropriate



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authority, the AO is directed to consider the belated revised return filed by the appellant and determine the income of the appellant accordingly.”

4. Aggrieved by the aforesaid decision of the Ld. CIT(A)/NFAC, the assessee’s before us.

5. We have heard both the parties and perused the records. We note that the assessee M/s. Nath Industries Ltd. (erstwhile M/s. Rama Pulp & Paper Ltd.) had filed the return of income for AY. 2018-19 u/s 139(1) of the Act on 28.08.2018 declaring total income of Rs.4,37,83,150/-. Thereafter two other private Ltd. companies viz M/s. Nath Industries Ltd and M/s. Nath Industrial and Chemicals Ltd got merged with the assessee company (M/s. Nath Industries Ltd), pursuant to the order of the Ld. NCLT dated 22.08.2019 w.e.f. 01.04.2017. Since the merger of the two entities with assessee company took place, the scheme of arrangement (hereinafter the scheme) got finally sanctioned and approved by NCLT by order dated 22.08.2019 with effect from 01.04.2017 (the appointed date as per the scheme), and consequently, the transferor/amalgamating companies ceased to exist with effect from appointed date 01.04.2017 and as per the operation of the scheme, the assets, profits and losses etc were transferred to the books of the assessee company/transferee company/amalgamated company. Since the scheme came into force retrospectively from 01.04.2017, the assessee duly filed the revised return admittedly on 20.03.2020, because the re-computation would have a bearing on the total income of the assessee with respect of the AY 2018-19, particularly on matters in relation to carry forward



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losses, unabsorbed depreciation and MAT credit etc. However, the AO/Ld. CIT(A) denied the same by relying on section 139(5) and 119(2)(b) of the Act read with Circular no. 9 of 2015 (CBDT) to contend that the assessee ought to have made an application for condonation of delay, and sought permission from CBDT before filing revised return beyond statutory period 31.03.2019 (for AY. 2018-19). Citing the said reasons, the lower authorities were of the view that the assessment could only be done on the basis of the original return filed by the assessee. This impugned action of Ld. CIT(A)/AO cannot be countenanced. According to us, the contention of the lower authorities relying on section 139(5) was erroneous. Section 139(5), (as it stood at the relevant time) makes it clear that where an assessee furnishes a return u/s 139(1) or u/s 139(4) and later discovers an omission or mistake therein, he may furnish a revised return at any time before expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. However, we note that this provision is not applicable to the facts and circumstances of the instant cases, since the revised return were not filed on account of an omission or mistake or wrong statement contained therein. The delay occurred on account of the time taken to obtain sanction of the scheme of Arrangement and Amalgamation from NCLT. In the facts of the case, we note that it was an impossibility for the assessee company to have filed the revised return of income for the AY 2018-19, before the due date [u/s 139(5) was on 31.03.2019], because the NCLT has passed the final order granting



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approval and sanction of scheme only on 22.08.2019. Moreover we note that the AO was aware of the amalgamation/merger order passed by NCLT dated 22.08.2019 because the notice issued by AO u/s 143(2) of the Act was dated 22.09.2019. And pursuant to the notice u/s 143(2) of the Act, the assessee brought to the notice of AO the order of NCLT (Approved Scheme of merger), and requested for considering the revised return of merged entity and also explained the reason for non-filing of revised return u/s 139(5) by 31.03.2019. However, the AO disregarded the request of assessee to take into consideration the revised return of income and instead scrutinized the original return, which action of AO and even the Ld. CIT(A) cannot be countenanced. We note that similar issue came up before the Hon'ble Supreme Court in the case of Dalmia Power Ltd. Vs. ACIT reported in (2020) 269 Taxman 352 (SC); (2019) 112 taxmann.com 252 (SC) , wherein the Hon'ble Supreme Court held that where pursuant to scheme of amalgamation approved by NCLT, transferor company had been succeeded by assessee/transferee company after due date of filing of revised return, Department ought to have considered the revised return filed beyond prescribed time limit after taking into account scheme of amalgamation as sanctioned by NCLT. In the light of the Hon'ble Supreme Court decision in Dalmia Power (supra), we direct the AO to receive the revised return filed pursuant to the approved scheme of Arrangement & Amalgamation by the NCLT and complete the assessment for AY 2018-19 taking into consideration the merged financial accounts of the amalgamated entity, in accordance to law.



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6. The next ground of the assessee is against the action of the Ld. CIT(A) confirming the disallowance/addition of Rs.83,553/- u/s 36 of the Income Tax Act, 1961 (hereinafter “the Act”) being employees contribution remitted after the due date of PF/ESI Act [though remitted by assessee before due date of filing of return of income u/s 139(1) of the Act]

7. We note that assessee’s claim of deduction in respect of PF and ESI contribution to the tune of Rs.83,553/- was disallowed, which was confirmed by Ld. CIT(A)/NFAC. Aggrieved by the aforesaid decision of the Ld. CIT(A), the assessee is before us. At the outset, we note that the issue is no longer res-integra. It is allowable deduction if the assessee has remitted the PF/ESI contribution before the due date of filing of ROI. And we note that assessee has remitted the same before the due date of filing u/s 139(1) of the Act, so it is allowable deduction. However according to Ld. DR the explanation inserted in Section 43B and Section 36(1)(va) of the Act by Finance Act, 2021 is retrospective in nature and is applicable for the year under consideration (i.e, AY 2018-19). However we cannot agree because on this issue the Tribunal has held that the ibid explanation inserted by Finance Act 2021 is prospective in operation. Be that as it may, since we have already ordered (supra) remitting the assessment back to the file of AO for de-novo assessment and directed the AO to receive the revised return of merged entity filed pursuant to the approved scheme of arrangement of amalgamation by NCLT i.e, taking into



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consideration the merged financial accounts of the amalgamated entity, this issue is also remitted back for fresh adjudication as per law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 04/8/2022.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 04/08/2022.  
Vijay Pal Singh, (Sr. PS)

**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,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai