

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER

ITA No.628/Ind/2019
Assessment Year: 2013-14

M/s Greater Kailash Hospitals Pvt. Ltd., Vs. ACIT 2(1),
11/2, Old Palasia, Indore (MP).
Indore (MP).

PAN: AADCG3040N

(Appellant)		(Respondent)
Assessee by	:	Shri S.N. Agrawal, AR & Shri Pankaj Mogra, CA
Revenue by	:	Shri Ashish Porwal, Sr.DR
Date of Hearing	:	18.11.2022
Date of Pronouncement	:	10.02.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 24.09.2018 of the CIT(A)-1, Indore, relating to Assessment Year 2013-14.

2. The grounds raised by the assessee read as under:-

"1. That on the facts and in the circumstances of the case and in law, additional income of Rs.5,83,25,000/- as accepted during the course of survey and offered for tax in the return of income requires to be excluded from the total income since no corresponding entry for the same was passed in the books of accounts of the appellant.

2. That on the facts and in the circumstances of the case and in law, additional income of Rs. 5,83,25,000/- as accepted during the course of survey and offered for tax in the return of income requires to be excluded from the total income since the assessing officer was himself satisfied with the availability of cash in the regular books of accounts of the appellant prior to deposit in the bank account.

3. That on the facts and in the circumstances of the case and in law, the Ld Assessing Officer erred in restricting the claim of depreciation to the extent of Rs. 2,05,69,740/- only in place of depreciation as allowable under section 32 of the Act of Rs. 2,62,09,454/-

4. The appellant reserves its right to add, alter and modify the grounds of appeal as taken by it"

Application of the assessee for condonation of delay in the Tribunal and for admission of new/additional grounds of appeal dated 18.11.2022:

3. The Id. Representative of the assessee (Id. AR), drawing our attention towards the affidavit of Dr. Anil Bandi sworn on 23.05.2019, submitted that the assessee company had filed its return of income for AY 2013-14 on 30.09.2013 declaring the total income of Rs.5,83,25,000/- on account of additional income as offered during the course of survey even though cash as available in the books of account duly justified the source of amount as advanced and, therefore, no corresponding entry was passed in respect of such additional income in the books of account of the assessee. The Id. AR further explained that subsequently the case was selected for scrutiny and the assessment order was passed u/s 143(3) of the Income-tax Act, 1961 (for short, 'the Act') on 15.02.2016 after making additions of Rs.13,23,104 viz., addition of Rs.6,22,252/- u/s 36(1)(iii) of the Act and Rs.7,00,852/- u/s 36(1)(va) r.w.s 43B of the Act. From the said affidavit, the Id. AR also submitted that the assessee company as per Form No.35, challenged the addition of Rs.7,00,852/- made to the total income of the assessee before the Id.CIT(A) which was deleted by the Id. First appellate authority, vide order dated 24.09.2018.

4. The Id. AR further explained that during the course of appeal as filed against the order passed u/s 153A r.w.s 143(3) of the Act, it was explained to the assessee

that additional income to the tune of Rs.5,83,25,000/- was offered to tax in the return of income for AY 2013-14 even though no corresponding entry for the same was passed in the books of account of the company since source of amount as advanced was duly explained from the cash as available in the regular books of account of the company. Hence, it was advised to file an appeal before the Tribunal at the earliest without any further delay. The Id. AR further explained that due to this reason the present appeal has been filed belatedly by 156 days. Therefore, the delay in filing the appeal may kindly be condoned and the appeal may kindly be admitted for hearing.

5. Apropos the application for admission of new/additional grounds of appeal, the Id. AR submitted that all the four grounds raised in the revised form No.36 are additional grounds as the same were never agitated before the Id.CIT(A) in Form No.35. Therefore, the said four grounds as mentioned in revised Form No.36 dated 15.11.2022 may kindly be admitted for hearing and consideration as per the proposition rendered by the Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. (1998) 97 taxman 358 (SC).

6. Replying to the above, the Id. Sr. DR strongly opposed the condonation of delay and admission of new/additional grounds of appeal for AY 2013-14.

7. Drawing our attention to the relevant assessment order for AY 2013-14 dated 15.02.2016 u/s 143(3) of the Act, the Id. Sr. DR submitted that the assessee himself filed the return of income on 30.03.2013 declaring the taxable income at Rs.5,83,25,000/- and the case was selected for scrutiny u/s 143(3) of the Act. The Id. DR further submitted that as per concluding para 8 of the said assessment order, it is clear that the AO accepted the return of income and made two additions only viz.,

addition of Rs.6,22,252/- u/s 36(1)(iii) of the Act and Rs.7,00,852/- u/s 36(1)(va) r.w.s 43B of the Act. The Id. Sr. DR further drew our attention towards Form No.35 filed by the assessee before the Id.CIT(A) dated 31.03.2016 and submitted that the assessee has raised the sole ground challenging the addition made by the AO of Rs.7,00,852/- and no other ground has been agitated or raised before the Id.CIT(A). Further drawing our attention towards the impugned first appellate order of the Id.CIT(A)-1, Indore, dated 24.09.2018, the Id. Sr. DR submitted that the sole ground of the assessee challenging the addition of Rs.7,00,852/- was allowed by the Id.CIT(A) deleting the addition and no grievance of the assessee was left to be agitated before the ITAT. Further drawing our attention towards new/additional grounds of the assessee placed in the revised form No.36 dated 15.11.2022, the Id. Sr. DR submitted that these grounds of the assessee were not raised before the Id.CIT(A) and were not an issue before the AO during assessment proceedings u/s 143(3) of the Act. The Id. Sr. DR submitted that the AO made two additions out of which the assessee accepted the first addition of Rs.6,22,252/- without disputing the same before the Id.CIT(A) and raised the sole ground challenging the addition of Rs.7,00,852/- and the said sole grievance of the assessee was allowed by the Id.CIT(A). Therefore, when no grievance was there of the assessee, then, the appeal filed belatedly by 156 days and new/additional grounds of appeal should not be admitted and considered for adjudication. The Id. Sr. DR strongly opposed the condonation of delay as well as admission of new/additional grounds of the assessee and submitted that first of all the appeal is not maintainable as no grievance of the assessee has been left unadjudicated or unaddressed at the level of the Id.CIT(A) and, secondly, the assessee has filed the appeal late by 156 days without any substantial reason and it

has failed to substantiate sufficient and plausible cause for such delay of 156 days in filing appeal before this Tribunal. He also drew our attention to para 2.6 of condonation application and affidavit and submitted that the cause stated explaining the delay is not a sufficient and plausible cause and the assessee has failed to substantiate any proper explanation and sufficient cause to explain delay of 156 days in filing appeal before the Tribunal. Therefore, condonation of delay is not permissible and allowable. Therefore, the appeal of the assessee may kindly be dismissed *in limine* without admission.

8. On careful consideration of the rival submissions, first of all we are in agreement with the allegation of the Id. Sr. DR that the AO has made two additions in the assessment order dated 15.02.2016 passed u/s 143(3) of the Act for AY 2013-14 and the assessee only agitated or challenged the sole addition of Rs.7,00,852/- before the Id.CIT(A) and the Id.CIT(A) allowed the sole ground of the assessee deleting the said addition and, thus, there was no issue or ground for the assessee left unadjudicated to agitate before this Tribunal against order of CIT(A) dated 24.09.2018 for AY 2013-14.

9. The Id. Counsel of the assessee has prayed that the additional grounds of the assessee were not agitated before the Id. CIT(A), but, subsequently as advised by the tax consultant thus the same are being raised first time before the Tribunal. Therefore, the same may kindly be admitted for adjudication and the matter be restored to the file of the AO for examination and verification.

10. Now, we proceed to adjudicate the issue of condonation of delay of 156 days in filing the present appeal by the assessee. In this regard, in para 2.6 of the application/affidavit it has been mentioned as under:-

"2.6. However, during the course of appeal as filed against the order passed under section 153A r.w.s. 143(3) of the Act, it was explained that additional income to the tune of Rs. 5,83,25,000/- was offered for tax in the return of total income for the Assessment Year 2013-14 even though no corresponding entry for the same was passed in the books of accounts of the company since the source of amount as advanced was duly explained from the cash as available in the regular books of accounts of the company. Hence, it was advised to file an appeal before the Hon'ble Bench at the earliest without any further delay. It was for this reason that the present appeal is being filed late."

11. On careful consideration of the reason and cause shown by the assessee for filing this appeal late by 156 days, we are of the considered view that the advise of tax consultant/advocate in another case while filing the appeal against the order passed u/s 153A r.w.s 143(3) of the Act cannot be a basis for filing the appeal late by 156 days. In the case *Collector Land Acquisition, Anantnag & Anr. vs Mst. Katiji & Ors*, judgement dated 19 February, 1987, reported in 1987 AIR 1353 their Lordships, speaking for the Hon'ble Supreme Court, categorically held that the onus is on the assessee to explain by way of sufficient and plausible cause the delay in filing the appeal. In our humble understanding, the said cause shown by the assessee in para 2.6 of the application is not a sufficient and plausible cause for the delay of 156 days in filing the appeal before the Tribunal. We are not hearing appeal against order u/s 153A r.w.s. 143(3) of the Act and it is also not clear that said assessment order was related or pertained to which assessment year. Thus, we safely hold that the cause shown by the assessee is not only insufficient but also implausible cause based irrelevant facts. Therefore, we decline to condone the delay of 156 days in filing the appeal.

12. So far as the admission of new/additional ground of the assessee and restoring the same for adjudication to the file of the AO is concerned, we are in agreement with the said prayer of the Id. AR as we are hearing the appeal against the order of the Id.CIT(A)-1, Indore dated 24.09.2018. The said first appeal was filed by the assessee agitating the sole ground before the Id.CIT(A) which was allowed by the Id. First appellate authority by impugned order by the impugned order dated 24.09.2018 and thus, no grievance of the assessee was left unadjudicated at the level of the Id.CIT(A). As per the provisions of section 250 of the Act, the assessee is entitled to file appeal before the Id.CIT(A) agitating the additions/disallowances made by the AO in the assessment order and, in the present case, the assessee availed this opportunity and filed the appeal before the Id.CIT(A) raising the sole ground of disallowance of Rs.7,00,852/- which was allowed by the Id.CIT(A) vide order dated 24.09.2018 and no grievance of the assessee was left unaddressed after the order of the Id. CIT(A)-1, Indore dated 24.09.2018.

13. In the case of *National Thermal Power Corporation Ltd. (supra)*, the Hon'ble Supreme Court held that: '*the power of the Tribunal in dealing with appeals is, thus, expressed in the widest possible terms. The purpose of assessment proceedings before taxing authorities is to assess correctly tax liability of as assessee in accordance with the law..... Then, the additional ground which goes to the root of the matter can be adjudicated without any extraneous material on the basis of the material already available on record and the same may be admitted for adjudication as additional ground.*' But, in the present case, the assessee is seeking admission of additional ground and restoration of the same to the file of the AO for examination,

verification and adjudication. Therefore, as per the prayer of the assessee itself, these grounds cannot be adjudicated by the Tribunal on the basis of the material available on record as per the prayer of the assessee itself. At the same time, we may also point out that the ground No.4 of the assessee has been added by way of filing revised form No.36 on 15.11.2022 and this ground was not placed in the original Form No.36 dated 21.05.2019. In our humble understanding when the assessee has not chosen to agitate issue of addition of rs.6,22,252/- made u/s 36(1)(iii) of the Act before the Id.CIT(A) which was clearly discernible from the assessment order, then, the same cannot be raised or agitated before the Tribunal as an additional ground by way of revised Form No.36 as ground No.4. So far as issue of admission of additional grounds No.1 to 3 are concerned, neither from the assessment order dated 15.02.2016 framed u/s 143(3) of the Act nor from the first appellate order of Id. CIT(A) dated 24.09.2018, we are unable to see any action, addition, disallowance or enhancement by the authorities below so far to validly enable the assessee to raise the same before this Tribunal as additional grounds, seeking the restoration of the same to the file of the AO for adjudication.

14. Furthermore, so far as ground No.1, 2 and 3 are concerned, the grievance of the assessee pertaining to these grounds is neither discernible from the assessment order nor from the first appellate order. On careful perusal of the assessment as well as the first appellate orders, we find that the AO has accepted the returned income of Rs.5,83,25,000/- and has made only two additions, totaling to Rs.13,23,104/-. Therefore, the assessee, by way of raising new/additional ground cannot be allowed to retract or revise its returned income without filing retraction application and revised return of income within prescribed time limit in the garb of irrelevant new/additional

grounds, that too in a non-maintainable being time barred appeal, which has been declared by the assessee in the return of income for AY 2013-14 itself and accepted by the AO. Therefore, we are inclined to hold that the additional grounds of the assessee cannot be admitted for hearing and the same cannot be restored to the file of the AO for verification, examination and adjudication, especially when from assessment order dated 15.02.2016 passed u/s 143(3) of the Act and first appellate order dated 24.09.2018, it is clearly discernible that there was no such issue either before the AO or before the Id. CIT(A) for their consideration and adjudication.

15. Therefore, the application of the assessee for condonation of delay of 156 days and admission of new/additional grounds No.1 to 4 are dismissed.

16. In the result, the appeal filed by the assessee, being not maintainable is dismissed *in limine*.

Order pronounced u/r 34(4) of the Income-tax (Appellate Tribunal) Rules, 1963 on 10.02.2023.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 10th February, 2023.
dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi

		Date
1.	Draft dictated on	30.01.2023
2.	Draft placed before the author	31.01.2023
3.	Draft placed before the other Member	
4.	Approved Draft comes to the Sr.PS/PS	
5.	Order uploaded on	
6.	File sent to the Bench Clerk	
7.	Date on which file goes to the Head Clerk.	
8.	Date on which file goes to the AR	
9.	Date of dispatch of Order.	