

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE Smt. BEENA PILLAI, VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.334/Bang/2020
Assessment Year : 2015-16

M/s Apsara Innovations Pvt. Ltd., No.217, 8 th C Main Road, 1 st Block, Kalyan Nagar, Bangalore-560 043. PAN NO : AADCA 7553 Q	Vs.	The Commissioner of Income- tax-(Appeal)-1.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok Betraj, Director and Smt. Sunita Sabu, C.A
Respondent by	:	Shri Gudimella VP Pavan Kumar, JCIT (D.R)

Date of Hearing	:	05.01.2023
Date of Pronouncement	:	08.03.2023

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of passed by the CIT(A)-1 dated 03/02/2020. The sole and substantive issue involved in this appeal is levy of penalty order passed u/s 271(1)(c) of the Act.

2. The brief facts of the case are that the assessee filed return of income on 30/09/2015 declaring a total income of Rs.3,45,830/-. The case was selected for scrutiny under CASS and statutory

notices were issued to the assessee. During the course of assessment proceedings, the AO observed from the financial statements that assessee has shown Rs.16,68,771/- as long term provisions under the head non-current liabilities. But in the schedule attached to that it, it is noticed that the long term provision shown as Nil. Further, the AO noticed from the balance sheet that short-term provisions under the head current liabilities shown of Rs.24,70,359/- but in the schedule attached to that the assessee has shown short-term provisions as Nil. It was confronted to the assessee and the assessee was unable to explain the reasons and he was also unable to produce any details. The AO had no other option other than adding into the total income of the assessee. The AO initiated penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of the income. The penalty show cause notice was issued to the assessee u/s 271(1)(c) of the Act on 29/12/2017 and an opportunity was granted to the assessee. During the course of penalty proceedings, the assessee did not respond to any of the notices. The assessee failed to explain the reasons for differences as observed by the AO for furnishing inaccurate particulars of income. Accordingly, the penalty u/s 271(1)(c) of the Act was imposed by the AO & passed order on 15.06.2018.

3. Against the penalty order, the assessed filed appeal before the CIT(A) with a delay of 229 days on 02/03/2019. During the course of hearing before the CIT(A), the assessee was asked to clarify the reasons for delay in preferring the the appeal with

necessary evidences. In response, the assessee submitted a copy of Affidavit dated 28/02/2019 by Shri Ashok Betraj, Director of the assessee company stating the reasons for delay in filing the appeal but the CIT(A) did not condone the delay and in opinion of the CIT(A), there was no sufficient cause for filing the appeal belatedly, accordingly the CIT(A) dismissed the appeal without going into the merits of the case.

4. Against the order of CIT(A), the assessee filed appeal before the ITAT.

5. During the course of hearing the Id.AR submitted that the assessee had filed appeal before the CIT (A) on 17.02.2020 against the quantum order passed by the AO in Form No.35 vide acknowledgment No.305054191170220 and the matter is pending before the CIT(A), therefore he requested that the matter may be sent back to the CIT(A) for a fresh consideration for deciding after the quantum appeal decision. In this regard he submitted the copy of the proceedings before the CIT (A), which are placed on record.

6. The Id.DR relied on the order of the lower authorizes and he submitted that before the CIT(A), the assessee did not file any appeal against the quantum addition within the time prescribed and he was also unable to explain the reason for differences as observed by the during the assessment proceedings as well as even during the penalty proceedings. The assessee before the

CIT(A) did not file appeal within the stipulated time and the reasons submitted by the Director of the assessee company was very vague, therefore, the CIT(A) is right in observing that there is no reasonable cause for condoning the delay.

7. Considering the rival submissions and facts available before us, we noticed that the CIT(A) has not condoned the delay in filing appeal before him and he observed that there is no reasonable cause for late filling of appeal against the penalty order passed by the AO . We noted from the documents submitted by the Id AR that the assessee has filed appeal against the assessment order, which is pending before the CIT(A). Since the quantum proceedings is pending before the CIT(A), in our considered opinion, the penalty order should not be adjudicated at this stage before deciding of appeal by the CIT(A) against the assessment order, therefore, in the interest of justice, we remit this issue back to the file of CIT(A) for fresh consideration after deciding the quantum appeal. This appeal is allowed for statistical purposes.

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

Order pronounced in the court on 8th March, 2023.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 8th March, 2023

Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.
14. Dictation note enclosed.....