आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 235/JP/2023
निर्धारणवर्ष/AssessmentYear : 2017-18

M/s. Marathon India Ltd. D-248, Bihari Marg, Bani Park Jaipur 302 016	बनाम Vs.	The Pr. CIT-1 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCM 1858 J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Dr. Rakesh Gupta, Adv.
Shri Saksham Agarwal,CA, Shri B.L. Agarwal,CA & Shri Pratik Jain, CA

राजस्व की ओर से/Revenue by: Shri Arvind Kumar Jain, CIT

सुनवाई की तारीख/Date of Hearing : 22/06/2023
उदघोषणा की तारीख/Date of Pronouncement: 27 /07/2023

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the ld. Pr. CIT-1, Jaipur dated 29-03-2023 for the assessment year 2017-18 u/s 263 of the Act. The grounds of appeal raised by the assessee are as under:-

> ''1. That having regard to facts & circumstances of the case, Ld. PCIT has erred in law and on facts in assuming jurisdiction u/s 263 of Income Tax Act, 1961 and has erred in holding the assessment order dated 29-06-2019 as erroneous as well as prejudicial to the interest of

revenue and that too by recording incorrect facts and findings and in violation of principles of natural justice.

2. That having regard to facts & circumstances of the case. Ld. PCIT has erred in law and on facts in setting aside the order passed by the assessing officer u/s 143(3) dated 29-06-2019 with direction to make the assessment afresh in the light of the observations made in the impugned order u/s 263 and that too by recording incorrect facts and findings and without observing the principles of natural justice and more particularly when all the details/information/evidences were available on the record at the time of assessment proceedings.

3. That having regard to facts & circumstances of the case, Ld. PCIT has erred in law and on facts in holding various adverse observation at page 2 of the impugned order which in any case is not sustainable on law.

4. In any view of the matter and in any case, order passed under section 263 is bad in law and against the facts and circumstances of the case & is barred by limitation.

2.1 Apropos Ground No. 1 to 4, the facts as emerges from the order of the ld. PCIT, Jaipur-1, Jaipur as under:-

> ‘’4. I have considered the submissions filed by the AR. It is seen that return of Income in this case was e-filed on 01.11.2017 at a total income of Rs. 9.69.030, The case was picked up under scrutiny through CASS. The assessment was completed u/s 143(3) of the Act on 29.06.2019 accepting the returned income. The reply of the assessee is not found convincing on the following counts:-
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> (1) The assessee in AY. 2016-17 & 2017-18 has filed Form 10CCB r.w.r. 18888 dated 03/07/2017 & 01/11/2017 respectively. In both the A.Ys the assessee had claimed deduction u/s 80-IC(2)(b)(i) of the Act as evident from the Forms. The assessee had specifically filed the particulars at

column no. 25 & 26 of the Forms wherein required the details of eligible business u/s 80-IC. The clerical mistake could be for one year but the same is found in both AY.s.

(ii) In the forms filed for A.Y. 2016-17 the initial assessment year is mentioned as 2014-15 and in the Form for AY 2017-18 initial assessment year was mentioned as 2015-16. Similarly, date of commencement of operation/activity by the undertaking in Forms of both years is different.

(iii) In A.Y. 2016-17 deduction u/s 80-IC claimed for Aizwal, Mizoram Unit and in A.Y. 2017-18 for Umiam, Meghalay Unit.

(iv) More importantly, during the present proceedings the assessee submitted another Form No. 10CCB r.w.r. 18888 dated 25/09/2017, in which in the details sought at point no. 26(c) in respect of the undertaking or enterprise received any machinery or plant or transfer which was previously used for any purpose, the "affirmative" reply is mentioned. Thus, in view of the declaration given itself by the assessee vide Form 10CCB the assessee is not eligible for deduction u/s 801E of the Act as per clause Il of sub-section 3 of Section 801E of the Act. In this regard, the relevant provisions of section 80-IE is reproduced hereunder- :-

(3) This section applies to any undertaking which futfits all the following conditions, namely:-

(i) it is not formed by splitting up, or the reconstruction, of a business already in existence:

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 338, in the circumstances and within the period specified in the said section;

(i) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose."

(v) In view of the above mentioned contradictions in the claim of deduction u/s 80IE on the part of the assessee, the same is not found verifiable/allowable and the AO has allowed the same in the assessment proceedings which makes the order erroneous and prejudicial to revenue.

5. Reliance has been placed on the following judicial pronouncements in this regard

1. In the case of M/s Gee Vee Enterprises 99 ITR 375 (Delhi High Court 1995]. It was held that the Assessing Officer (AO) is not only an adjudicator but also an investigator, and failure of the AO to conduct the required inquiring and accepting the statement of the assessee without due verification renders the order erroneous as well as prejudicial to the interests of the revenue. Absence of proper inquiring by the AO would render the assessment order erroneous as well as projudicial to the interest of the revenue as held in following cases:

1. Jagdish Kumar Gulati vs CIT 269 ITR 71 (Allahabad)
2. Duggal & Co. 220 ITR 456 (Delhi)
3. KA. Rama Swami Chettiar vs CIT 220 ITR 657 (Mad)

6. Considering all the facts and circumstances of the case and for the reasons discussed AO is held erroneous in so far as it is prejudicial to the interests of the revenue for the purpose of section 263 of the I.T. Act. The said order has been passed by the Assessing Officer in a routine and casual manner without applying the applicable sections of the Act. The Assessing Officer has not verified the details which were required to be verified under the scope of scrutiny. The order of the Assessing Officer is, therefore, liable to revision under the explanation (2) clause (b) and clause (a) of section 263 of the Income Tax Act. The assessment order is set aside to be made afresh in the light of the observation made in this order. The AO is required to make necessary verification and to determine and finalize the

assessment in accordance with the prevailing law to determine the correct income of the assessee liable to tax for the A.Y.2017-18 after allowing reasonable opportunity to the assessee.''

2.2 At the outset of the hearing, the Bench noted that there is delay of 324 days in filing the appeal by the assessee for which the Director of the Company vide letter dated 29-04-2023 prayed to condone the delay by giving therein reason as under:-

''Sub: Prayer for condonation of delay in filing of appeal in the case of M/s. Marathon India Ltd. for A.Y. 2017-18 in ITA No.235/JP/2023 against order passed u/s 263 of Income Tax Act, 1961. PAN AABCM 1858J

The assessment in this case was completed u/s 143(3) which was revised u/s 263 vide order dated 29-03-2022. Appeal against this order has been preferred by the assessee on 17-04-2023 with delay of 324 days.

Pursuant to the direction given in order u/s 263, assessment order was passed u/s 143(3)/263 dated 23-03-2023, against which assessee preferred an appeal before ld. CIT(A), NFAC on 14-04-2023.

When the concerned of the assessee company contacted Dr. Rakesh Gupta, Partner of RPA Tax India for filing appeal against order u/s 143(3)/263, the assessee company came to know on the advice of Dr. Rakesh Gupta, Advocate that the assessee company should have filed an appeal before Hon'ble Tribunal, Jaipur against the order u/s 263 also, as the order u/s 263 can be challenged before Hon'ble Tribunal only. Accordingly, appeal was filed before Hon'ble Tribunal, Jaipur on 17-04-2023.

The assessee company remained under the bonacfide belief that remedy would lie when the order pursuant to the direction u/s 263 would be passed. Hence appeal u/s 263 could not be filed in time due to **ignorance of law** and bona fide belief as mentioned above. Therefore, when appeal was filed before Hon'ble Tribunal, Jaipur against order u/s 263 as aforesaid, delay of 324 days happened due to the above mentioned reason which, it is submitted with great respect, was good and sufficient reason.

It is therefore prayed that the delay may please be condoned as was condone by your honour in the case of Shreena Exports ITA 6001/Del/2013 dated 15-10-2014 (copy enclosed)

Reliance is further placed on the judgement of Collector, Land Acquisition vs Mst. Katiji & Others,167 ITR 471 (SC).

2.3 To this effect, the Director of the assessee company filed an affidavit praying therein as under-

''1 That I am the director of the assessee company and therefore competent to depose these facts on oath.

2. That the assessment in this case was completed u/s 143(3) vide order dated 29-06-2019 which was revised u/s 263 vide order dated 29-03-2022. Appeal against this order has been preferred by the assessee company on 17-04-2023 with delay of 324 days.

3. That pursuant to the direction given in order u/s 263, assessment order was passed u/s 143(3) / 263 dated 23-03-2023 against which assessee preferred an appeal before ld. CIT(A), NFAC on 14-04-2023.

4. That I, on behalf of the assessee company, contact Dr. Rakesh Gupta, partner of M/s. RPA, Tax India for filing appeal before ld. CIT(A), NFAC against order passed u/s 143(3) /263 dated 23-03-2023.

> 5. That I, on behalf of the assessee company came to know on the advice of Dr. Rakesh Gupta, Advocate that the assessee company should have filed an appeal before Hon'ble Tribuan, Jaipur against the order u/s 263 also, as the order u/s 263 can be challenged before Hon'ble Tribunal only. Accordingly, appeal was filed before Hon'ble Tribunal, Jaipur on 17-04-2023.
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> 6. That assessee company remained under the bona fide belief that remedy would lie when the order pursuant to the direction u/s 263 would be passed. Hence, appeal u/s 263 could not be filed in time due to the bona fide belief as mentioned above.''

2.4 During the course of hearing, the ld. AR of the assessee argued that the delay so made of 324 days in filing the appeal is not intentional but it is because of ignorance of law and bona fide belief on the part of the assesseee.

2.5 On the other hand, the ld. DR supported the order of the ld. PCIT and objected to grant condonation of delay of 324 days in filing the appeal by the assessee.

2.6 We have heard both the parties and perused the materials available on record including the judgement cited by the respective parties. Brief facts of the case are that initially the assessment order was passed by the AO on 29-06-2019. Subsequently, the said order was revised by the ld. PCIT by issuing show cause notice and providing opportunity of hearing to the assessee vide order dated 29-03-2022. Subsequent to this order of the ld PCIT u/s 263, consequential order by the

AO was passed on merits after providing due and sufficient opportunity to the assessee vide order dated 23-03-2023 u/s 143 (3) r.w.s. 263 & read with Section 144B of the Income Tax Act. Against this consequential order, the assessee preferred appeal before the ld. CIT (A) on 14-04-2023 which is still pending for adjudication on merits before the ld. CIT(A). In the meantime, after filing the appeal before the ld. CIT(A), the assessee also preferred appeal against the initial order passed u/s 263 of the Act dated 23-03-2022 and instituted the appeal on 17-04-2023 i.e. after instituting the appeal against order passed by the AO u/s 143(3)/263 before the ld. CIT(A) on 14-04-2023. The Bench noted that there is a delay of 324 days. After evaluating the facts of the present case, we are conscious of the facts that the Courts should not adopt an injustice oriented approach in rejecting the application for condonation of delay. However, the Court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. After having gone through different citations of different forums as well as courts, we have noticed that the Court have time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and

convincingly explained, the Court cannot condone the delay on sympathetic grounds alone.

2.6.1 As per present facts of the case, the order of assessment u/s 143(3) was passed on 29-06-2019 and later on said order was revised by the ld. PCIT vide impugned order passed u/s 263 of the Act on 29-03-2022. The said order was not challenged by the assessee initially rather the assessee participated in the subsequent proceedings initiated by the AO after passing of impugned order dated 29-03-2022. Since the assessee actively participated in the proceedings before the AO, therefore, after providing opportunity of hearing and after evaluating the facts and circumstances of the case, the AO passed the order of assessment u/s 143 (3) read with section 263 of the Act on 23-03-2023 against the assessee on merit.

2.6.2 Aggrieved by the said order u/s 143(3) read with Section 263 of the Act, the assessee had challenged the same before the ld. CIT(A) by filing the first appeal on 14-04-2023 thereby taking all the pleas available to him and the said appeal is still pending for adjudication on merits before the ld. CIT(A). Interestingly, after two days of filing of appeal before the ld. CIT(A), the assessee challenged the impugned order passed u/s 263 of the Act dated 29-03-2022 before us taking the plea that the assessee company when contacted Dr.Rakesh Gupta, Advocate then they came to know on the basis of advice of Dr. Rakesh Gupta, Advocate that the assessee company should have filed an appeal before ITAT, Jaipur Bench against

the impugned order passed u/s 263 of the Act. As per case of the assessee, the appeal against impugned order passed u/s 263 could not be filed in time due to ignorance of law and bona fide belief as mentioned above.

2.6.3 First of all, before proceeding further, we are of the view that the assessee is a limited company and assisted by number of professionals including legal experts and they had been engaged in the litigation with Revenue Deptt. at different stages before different forums and non-filing of appeal against the impugned order u/s 263 of the Act because of ignorance of law and bona fide belief cannot be termed as ''sufficient cause'' as explained u/s 5 of the Limitation Act. Now the question arises when once the assessee has participated in the proceedings initiated by the AO in consequence to the ''impugned order passed u/s 263 of the Act'' and orders in the said assessment proceedings have already been passed on merit by passing afresh assessment order u/s 143(3)/263 of the Act dated 23-03-2023 which has already been challenged by the ld. CIT(A). The said fact goes to show that no prejudice have been caused to the rights of the assessee as he has already availed an alternative and effective remedy available to him.

2.6.4 Now after having availed the effective and efficacious remedy, the assessee in parallel proceedings has filed appeal before us challenging the initial order passed u/s 263 of the Act dated 29-03-2022 after delay of 324 days. Therefore, under these peculiar facts, we are of the view that Courts are not a ''walk- in-

place'' where appellant can approach whenever they want. The law of Limitation is enshrined in the legal maxim ''Interest Reipublicae Ut Sit Finis Litium (It is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time. To understand the scope of the term ''sufficient cause'' in matters of delay, we place reliance on the decision of **Hon'ble Supreme Court in the case of Basawaraj and Ors vs The Special Land Acquisition Officer, AIR 2014 SC 746** wherein the Hon'ble Supreme Court held that the sufficient cause does not include the negligent manner in which the applicant had acted or/ and there was a want of bona fide, on his/her part. If a party does not act diligently or remains inactive, it cannot qualify as sufficient ground allowing the court to exercise discretion in favour of such a party. We are further of the view that condonation of delay is not an automatic right but requires the person requesting it to provide a valid explanation for each day of delay and demonstrate a reasonable cause. The discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. ''Sufficient Cause'' cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributing to the party. On this proposition, we place reliance on the in the case of **Ram Lal & Ors vs Rewa Coalfields Ltd. AIR 1962 Supreme Court 361** wherein the Hon'ble Supreme Court has held that the

decision to grant condonation of delay is discretionary even if sufficient cause is proven. Moreover, the Court considers all relevant facts including diligence and good faith but the scope of this enquiry while exercising the discretionary power is limited to only such relevant facts. Lastly, the Bench while referring to the case of **Anshul Agarwal vs New Okhla Industrial Development Authority (2011) 14 SCC 578** held that the reason provided for the delay must be something beyond the individual's control that prevented them from approaching the Court.

2.6.5 After analyzing and evaluating the facts of the present case, it is nowhere coming forth from the instant application moved by the assessee seeking condonation of delay as to whether the applicant herein made any efforts or attempt to contact his counsel engaged in the tax proceedings after passing of impugned order u/s 263 of the Act. Thus the plea of the assessee cannot be taken to be as gospel truth unless the applicant would have shown that he made any serious efforts after passing of impugned order for deciding the same before any appellate authority or moreover, no such information has been furnished by the assessee before us. Therefore, we are of the considered view that that decision to condone the delay has to be exercised judiciously and if Court starts condoning delay where ''no sufficient cause'' is made out then that would amount to violation of statutory principles. Thus, we rely upon the decision of **Hon'ble High Court in the case of Mewa Ram (deceased by L.Rs) & Ors vs State of Haryana, AIR 1987 SC**

45,State of Nagaland vs Lipok AO & Ors, AIR 2005 SC 2191 and D. Gopinathan Pillai vs State of Karal;a & Anr.AIR 2007 SC 2624. Further the decision relied upon by the assessee of ITAT Delhi Bench in the case of **Sheena Exports vs CIT (Central) [ITA No, 6001/Del/2013 dated 15 Oct. 2014** is of no help to the assessee as in para 5 of the said order, it is mentioned that the assessee *was pursuing the remedy in a wrong forum* and in Para 5.3 it is again reiterated that it was a case of pursuing the wrong remedy on mistaken advice but the facts of the present case are altogether different and distinguishable. It is nowhere stated in the application for seeking condonation of delay in the present case that the assessee was pursuing wrong remedy on mistaken advice whereas on the contrary remedy adopted by the assessee challenging the order passed by the AO u/s 143(3)/263 of the Act dated 23-03-2023 which was passed in consequence of impugned order dated 29-03-2022 has already been adopted by the assessee before appropriate forum i.e the ld. CIT(A) on 14-04-2023 and it is nowhere mentioned that the assesee had pursued the wrong remedy on mistaken advice.

2.6.6 It is also noteworthy to mention the decision of ***Hon'ble Supreme Court in the case of State of West Bengal vs Administrator, Howrah Municipality & Ors (1971) (12) TMI 106 (SC).*** *The conclusion was couched in these words '' The Assistant Divisional Manager of the company-appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals*

are filed by such companies daily. The facts of this case show, as observed earlier, that the mistake is not bona fide and the appellant has failed to show sufficient cause to condone the delay. In view of the above decisions and the facts of the case, the Bench does not find merit in the submission to condone the delay of 324 days and thus the application for seeking condonation of delay stands dismissed and consequently the appeal of the assessee is also dismissed.

3.0 In the result, the appeal of the assessee is dismissed with no order as to cost.

Order pronounced in the open court on 27/07/2023.

Sd/- Sd/-

(राठोडकमलेश**जयन्तभाई**) (संदीप गोसाई)
(Rathod Kamlesh Jayantbhai) (Sandeep Gosain)
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 27/07/2023
*Mishra
आदेश की प्रतिलिपिअग्रेशित / Copy of the order forwarded to:
1. The Appellant- M/s. Marathon India Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- The Pr. CIT-1, Jaipur
3. आयकरआयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.235/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar