

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1651/MUM/2023  
(Assessment Year: 2019-20)**

**Atray Commerce Private Limited,**

Flat No. 7, 1<sup>st</sup> Floor, SA PMA CHS,  
Plot No. 10, Sector 4, Vashi,  
Navi Mumbai - 400703  
[PAN : AAQCA7158N]

..... **Appellant**

**Commissioner of Income Tax  
(Appeals),**

National Faceless Appeal Centre  
(NFAC) Delhi

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : None  
For the Respondent/Department : Shri Manoj Kumar Sinha

**Date**

Conclusion of hearing : 25.07.2023  
Pronouncement of order : 31.07.2023

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant has challenged the order, dated 16/03/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2019-20, whereby the Ld. CIT(A) had dismissed the appeal of the Appellant against the intimation/order, dated 10/04/2020, passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The relevant facts in brief are that the appellant, a new company

incorporated under the Companies Act, 2013 on 28.03.2018, filed its first return of income for Assessment Year 2019-20 on 01.11.2019 declaring a loss of INR 54,91,245/- consisting of business loss of INR 44,19,453/- and loss due to depreciation of INR 10,71,792/-. Due to certain technical difficulties and connectivity issues faced by the Appellant-company, the income tax return could not be filed in time and was delayed by around 11 minutes.

- 2.1. When the Appellants return of income was processed under Section 143(1) of the Act on 10.04.2020, the carry forward of business loss of INR 44,19,453/- was not allowed to the Appellant as the income tax return was filed after the due date as specified under Section 139(1) of the Act.
- 2.2. Being aggrieved, the Appellant preferred appeal before CIT(A) which was also dismissed.
- 2.3. Therefore, the Appellant preferred the present appeal before the Tribunal raising the following grounds:
  1. *The Ld. CIT(A) has completed the assessment without considering the facts & circumstances of the case, which is contrary to law and is against the principles of natural justice.*
  2. *Denial of carry-forward of business loss of INR 44,19,453 under Section 70*
    - i. *On facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not allowing carry forward of Business Loss of INR 44,19,453 on the ground that the Return of Income for AY 2019-20 is filed by the assessee on 01.11.2019 (at 00:11:37 AM) instead of filing on or before 31.10.2019.*
    - ii. *The Ld. CIT(A) ought to have considered that the delay was absolutely on account of technical glitches on portal/connectivity issues faced by the appellant on the last date of filing the ITR and therefore a negligible time*

*lag of 11:37 minutes should have been condoned to enable the appellant to carry forward the business loss.*

*iii. The Ld. CIT(A) ought to have appreciated appellant's commitment for timely compliance in ensuring the filing of ITR by midnight, inspite of technical glitches/connectivity issues.*

*iv. The Ld. CIT(A) ought to have considered that, there was no willful and mala-fide intent on the part of the appellant in view of the fact that the cause of delay was genuine."*

3. On perusal of the above grounds raised by the Appellant and the order passed by the Assessing Officer and the CIT(A) we find that there was a delay of 11.37 minutes in filing the return of income on account of technical glitches/connectivity issues faced by the Appellant. While the Appellant tried to file the return of income on 31/10/2019, it could be uploaded only on 01.11.2019 at 00:11:37 AM. The bonafides of the Appellant cannot be doubted. There was a delay of only 11.37 minutes in filing the return of income. In our view, it would be a travesty of justice in case the carry forward of business loss of INR 44,19,453/- which was otherwise allowable to the Appellant is denied merely on account of delay of 11:37 minutes in filing the appeal. In the case of DCIT, Central Circle -7 (3), Mumbai Vs. Palava Dwellers Pvt. Ltd. [ITA No. 2147/Mum/2018, Assessment Year 2014-15, dated 20/02/2020] the Tribunal had condoned delay of 46 minutes in filing the appeal caused on account of technical reasons after taking onto consideration the following judgments of the Hon'ble High Courts (a) Bombay Mercantile Co-op Bank Vs. CBDT: [2001] 332 ITR 87 [Bombay], (b) Lodhi Property Co. Ltd Vs. Under Secretary (ITA-II) Department of Revenue: [2010] 323 ITR 441 [Delhi], and (c) CBDT vs Regen Infrastructure & Services Private Limited: [2017] 244 Taxman 39 (Madras).

4. In view of the above decision of the co-ordinate Bench of the Tribunal, we direct the Assessing Officer to allow the claim of carry forward of business losses of INR 44,19,453/- after ascertaining the correctness of the claim made by the Appellant. It is clarified that the claim of carry forward of business loss of INR 44,19,453/- shall not be denied merely on account of delay of 11:37 minutes in filing the return of income. While issuing the aforesaid directions we have also taken into consideration Circular No. 9 of 2015 (F.No. 312/22/2015-OT), dated 09/06/2015 issued by the Central Board of Direct Taxes (CBDT). In terms of the aforesaid, Ground No. 2 raised by the Appellant is allowed for statistical purposes. Ground No. 1 raised by the Appellant is rendered infructuous and therefore, dismissed. Ground No. 3 raised by the Appellant is dismissed as being general in nature.
5. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 31.07.2023.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 31.07.2023  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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