

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 338/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Octane Softech Private Limited,
Hyderabad
[PAN No. AAFCB5599K]

Income Tax Officer,
Vs. Ward-16(1),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Pawan Kumar Chakrapani, AR
राजस्व द्वारा/Revenue by: Ms. TH. Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 12/09/2023
घोषणा की तारीख/Pronouncement on: 13/09/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 30/03/2022 passed by the learned Principal Commissioner of Income Tax (PCIT), Hyderabad, under section 263 of the Income Tax Act, 1961 (for short "the Act") in the case of Octane Softech Private Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee was deriving income from the software development and filed the return of income on 27/10/2017 declaring current year loss of Rs. 29.45 lakhs. Assessment was complete by order dated 24/05/2019 accepting the same. Subsequently, on a perusal of record, the learned PCIT, by order dated 30/03/2022 found that the assessment order was erroneous insofar as it is prejudicial to the interest of Revenue because the learned Assessing Officer failed to verify the documents in support of the projections made by the assessee to value the shares, set aside the assessment order and directed the learned Assessing Officer to verify the issue of valuation of shares in accordance with Rule 11UA of the Income Tax Rules, 1962 (Rules).

3. Aggrieved by such an action of the learned PCIT, assessee preferred this appeal with a delay of 393 days stating that the learned PCIT failed to appreciate that there was no error, and the learned Assessing Officer took a conscious view after considering all the material required for verification of the value adopted by the assessee in respect of the shares.

4. Learned DR, at the outset, submitted that there are no grounds to condone the delay because, the cause attributed by the assessee to the delay is not genuine and against the public policy. He submits that the impugned order was passed on 30/03/2022 and for more than one year, the assessee kept quiet, but contesting the consequential proceedings before the learned Assessing Officer and having lost the same, again it came back to contest the jurisdiction of the learned PCIT to pass the impugned order. If such a conduct of the assessee is permitted by condoning the delay, there will not be any end to litigation because, without any bonafide, the people will go on litigating against the State,

taking one cause after the other till they eventually exhaust themselves. He placed reliance on the view taken by the Co-ordinate Bench of the Tribunal in the case of SRK Infracon (India) Pvt. Ltd., vs. ITO in ITA No. 08/Hyd/2022, by order dated 08/02/2023, wherein this sort of conduct of the assessee was deprecated.

5. We have gone through the record in the light of the submissions made on either side. It could be seen from the affidavit filed in support of the request of the assessee to condone the delay, it is stated that pursuant to the impugned order, the consequential assessment order was passed on 25/03/2023, the assessee filed a petition in Form 68 on 27/04/2023, seeking immunity from levy of penalty under section 270AA of the Act and when it was rejected on 10/05/2023, the assessee came forward with this appeal on 26/06/2023 with a delay of 393 days.

6. The affidavit further states that it was only after rejection of the request of the assessee under section 270AA of the Act, the assessee approached the counsel and got the advice. There is no reason as to why the assessee sought such an advice at a belated stage. On a consideration of all these facts, we are convinced that the assessee wanted to have the best of both the worlds and having tested its luck before the learned Assessing Officer in the consequential proceedings and having lost the same, it came back to agitate the legality of the impugned order. Assessee is not an individual, but it is a commercial entity with a battery of legally trained people available for assistance. The pleas available to the individual cannot be taken by the commercial entities with all the legal paraphernalia at their disposal. If a party like assessee is permitted to

conduct litigation in this way, we are afraid there would be no end to litigation and it would be against the public policy.

7. In the case of SRK Infracon (India) Pvt. Ltd (supra), a Co-ordinate Bench of the Tribunal considered this aspect of assessee filing the appeal with considerable delay, having lost the case in consequential proceedings and held that in such an event, it would not be in the public interest to condone the delay. Following the said view, we do not find it proper to condone the delay and the reason stated by the assessee does not constitute sufficient cause for such purpose. We accordingly decline to condone the delay, and without adverting to the merits of the appeal, dismiss the same.

8. In the result, appeal of the assessee dismissed.

Order pronounced in the open court on this the 13th day of September, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 13/09/2023

TNMM

Copy forwarded to:

1. Octane Softech Private Limited, H.No. 8-2-309/3/A, 4th Floor, Road No. 14, Banjara Hills, Hyderabad.
2. Income Tax Officer, Ward-16(1), Hyderabad.
3. PCIT, Hyderabad-4.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD