

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

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

आ.अपी.सं / ITA No. 229/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Kancherla Medical Services Private Limited, Hyderabad [PAN No. AACCK9703H] Vs. Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms. Suvibha Nolkha, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 10/10/2023
घोषणा की तारीख/Pronouncement on: 10/10/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 31/03/2022 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 Kancherla Medical Services Private Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee, a limited company, was deriving income from the business of medical services. Assessee filed the return of income for the assessment year 2017-18 declaring income of Rs. 20,89,51,930/-. Assessment was complete by order dated 26/12/2019 at the returned income. Subsequently, on a perusal of record, the learned PCIT found that during the year under consideration, the assessee executed a business transfer agreement dated 18/05/2016 with Mr. Ravindranath GE Medical Associates Pvt. Ltd., and received consideration of Rs. 20 crores, but the learned Assessing Officer failed to verify the genuineness of the business transfer agreement, details of assets sold, details of consideration received, genuineness of payments made to the creditors etc. On that score, learned PCIT, by order dated 31/03/2022 found that the assessment order was erroneous insofar as it is prejudicial to the interest of Revenue, and accordingly set aside the assessment order and directed the learned Assessing Officer to verify the same.

3. Aggrieved by such an action of the learned PCIT, assessee preferred this appeal with a delay of 324 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. Learned AR submitted that an inadequate enquiry by the learned Assessing Officer if any is not a ground for exercising jurisdiction under section 263 of the Act and the proceedings under section 263 of the Act are not meant to substitute the views for the learned PCIT for the views of the learned Assessing Officer. She vehemently argued that there is no cogent material to show that there is non-application of mind on the part of the learned Assessing Officer. She prayed that since the assessee has got a good case on merits, the delay

may be condoned, because the petitioner believed that the option to seek remedy for filing an appeal was after the consequential order passed by the learned Assessing Officer under section 143(3) read with section 263 of the Act, but he was advised to file an appeal not only against the consequential order, but also against the order under section 263 of the Act.

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 31/03/2022 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, 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 bona fide, 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 and CSK Realtors Limited vs. ITO in ITA No. 233/Hyd/2023, for the assessment year 2017-18, by order dated 13/09/2023, 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 assessee thought that it would only after

disposal of the consequential proceedings, the order under section 263 of the Act has to be challenged, but subsequently, on proper advice, came to know that the impugned order has to be challenged separately. Claiming that it did not receive proper legal advice at that point in time, the assessee came forward with this appeal on 19/04/2023 with a delay of 324 days.

6. The affidavit does not specify when did the assessee approach the counsel and get the advice. There is no reason as to why the assessee sought such an advice at a belated stage. There is no denial of the fact that the consequential order was also passed. It is also not in dispute that the assessee was pursuing the consequential order with the aid and advice of professionals only given the volume of the returned income. 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. and CSK Realtors Limited (supra), Co-ordinate Benches 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 10th day of October, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 10/10/2023

TNMM

Copy forwarded to:

1. M/s. Kancherla Medical Services Private Limited, Flat No. 504, Challa Pride, D.No. 7-2-1735, & 1813, Czech Colony, Sanath Nagar, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. PCIT, Hyderabad-2.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD