

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA Nos.543 & 544/Del/2023
Assessment Years: 2018-19 & 2019-20

Blayfort Ltd., C/o- Sudit K Parekh & Co. LLP 2002 Urmi Estate, 20 th Floor, 95 Ganpatrao Kadam Marg, Lower Parel, Mumbai, Maharashtra	Vs.	ACIT, Circle-1(1)(2) Intl. Tax, New Delhi
PAN :AAFCEB4917K		
(Appellant)		(Respondent)

Assessee by	Ms. Anita Basrur, CA Sh. Praveen Kumar Darak, CA
Department by	Sh. Sanjay Kumar, Sr. DR

Date of hearing	10.10.2023
Date of pronouncement	17.10.2023

ORDER

Captioned appeals by the assessee arise out of two separate orders, both dated 04.01.2023 of learned Commissioner of Income Tax (Appeals)-42, New Delhi, pertaining to assessment years 2018-19 and 2019-20.

2. Briefly the facts are, the assessee is a non-resident corporate entity and a tax resident of Cyprus. Assessments in case of the

assessee were completed under section 143(3) read with section 144C(3) of the Income-tax Act, 1961 (in short 'the Act'). While doing so, the Assessing Officer added back the interest income received by the assessee on Compulsorily Convertible Debentures (CCDs). Against the assessment order so passed, the assessee preferred appeals before learned first appellate authority. It was observed by learned first appellate authority that, though, as per the statute, the appeals have to be filed electronically in the portal of the Income Tax Department within a period of 30 days from the date of receipt of the assessment orders, however, appeals were not filed within the due date. He observed, the assessment order for assessment year 2018-19 was served on the assessee on 07.09.2021. Whereas, the assessee filed the appeal on 18.10.2022. Similarly, for assessment year 2019-20, the assessment order was served on 29.10.2021. Whereas, the appeal was filed on 18.10.2022. Thus, holding that the appeals were not filed within the period of limitation, learned first appellate authority dismissed them in limine, without deciding on merits.

3. Before us, learned counsel appearing for the assessee submitted that the assessee is a non-resident company and in the assessment years under dispute, it has earned interest income

from subscription to CCDs of an Indian entity. She submitted, the assessee, being a tax resident of Cyprus, is entitled to treaty benefits and as per Article 11(2) of India – Cyprus Double Taxation Avoidance Agreement (DTAA), the interest income is taxable at the rate of 10%. Whereas, the Assessing Officer has applied the rate of 40% without granting benefit of treaty provisions. She submitted, though, the assessee was trying to upload the appeals in the department's portal on or before due date, however, due to technical glitches, the assessee could not upload them. She submitted, due to the difficulties faced by the assessee in uploading the appeal, it was compelled to physically submit the memorandum of appeals before the first appellate authority. She submitted, the copies of the memorandum of appeal for assessment year 2018-19 were submitted physically on 11th October, 2021 and for assessment year 2019-20 were submitted on 23rd November, 2021. However, she submitted, the assessee was ultimately able to upload the appeals electronically to the portal of the Income Tax Department in October, 2022. She submitted, though, the assessee has sent email to learned first appellate authority in October, 2021 intimating about the difficulties faced in uploading the appeals electronically, however,

the explanation of the assessee was not, at all, considered by the learned first appellate authority and without providing any opportunity of being heard to the assessee, appeals were dismissed *in limine* on the ground of delay. She submitted, since, the assessee has a strong case on merits, it should not be prevented from getting the desired relief through proper disposal of appeals on merits.

4. Learned Departmental Representative relied upon the observations of learned first appellate authority.

5. We have considered rival submissions and perused the materials on record. Undisputedly, the assessee has filed the appeals electronically with delay of about one year. The assessee has explained that due to technical glitches, appeals could not be uploaded to the portal of the Income Tax Department within the period of limitation. It has further been explained that, though, the assessee was continuously trying to upload the appeals, however, it failed to do so and ultimately, could upload the appeals in October, 2022. It is observed, learned first appellate authority has apparently dismissed assessee's appeals *in limine* due to non-filing of the appeals within the period of limitation.

6. A perusal of the order of learned first appellate authority clearly reveals that it has been passed *ex-parte* without providing an opportunity of being heard to the assessee. Even, learned first appellate authority has not given any opportunity to the assessee to explain the delay in filing the appeals. It is evident that expressing the difficulties faced in uploading the appeals, the assessee has sent communication through mail to the first appellate authority, which apparently has been ignored by him. The *bona fide* of the assessee is further proved from the fact that due to difficulty in uploading the appeals, the assessee filed them physically in October and November, 2021 respectively. The aforesaid facts clearly reveal that there was reasonable cause for not filing the appeals within the prescribed period of limitation. Further, assessee's contention that it has a strong case on merits deserves consideration.

7. In view of the aforesaid, we are inclined to set aside the impugned orders of learned first appellate authority and restore the matter back to him for *de novo* adjudication of the case on merits, after providing due and reasonable opportunity of being heard.

8. In the result, appeals are allowed for statistical purposes.

Order pronounced in the open court on 17th October, 2023

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 17th October, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi