

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2610/Mum/2023
(Assessment Year: 2010-11)

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| Aadhar Wholesale Trading and Distribution Ltd. Knowledge House Shyam Nagar, JVL R, Jogeshwari (E), Mumbai – 400 060 | Vs. | DCIT-14(1)(1) Mumbai |
| PAN/GIR No. AAFCA 8793 G | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Mani Jain & Shri Prateek Jain |
| Respondent by | : | Shri Ajay Chandra |
| Date of Hearing | : | 16.11.2023 |
| Date of Pronouncement | : | 20.11.2023 |

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2010-11.

2. The assessee has challenged the order on the ground that the Id. CIT(A) has failed to condone the delay in filing the appeal without sufficient opportunity of hearing and has also challenged the ground of reopening the assessment u/s. 147 of the Act along with the addition of Rs.54 crores made by the Id. Assessing Officer ('A.O.' for short) and

confirmed by the Id. CIT(A) on account of share premium received by the assessee as unexplained cash credit u/s. 68 of the Act.

3. The brief facts are that the assessee company is a joint venture between the Future Ventures India Ltd. and Godrej Agrovet Ltd. and is engaged in the business of rural and semi urban retail distribution of agricultural and consumer products for personal and household use including apparel, seeds, fertilizers and FMCG products through various franchisee outlets. The assessee had filed its return of income dated 21.09.2010 declaring the total income at Rs.(-)37,55,04,730/- and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny and the assessment order dated 30.01.2013 was passed u/s. 143(3) of the Act. The assessee's case was then reopened u/s. 147 of the Act for the reason that the assessee company had issued 1,35,00,000 shares at a huge premium of Rs.54 crores, thereby on the belief that the income chargeable to tax has escaped assessment. The Id. A.O. then passed the impugned assessment order dated 11.03.2016 u/s. 143(3) r.w.s. 147 of the Act, thereby determining the total income at Rs.16,44,95,270/- after making addition/disallowance on income from house property and on account of share premium.

4. Aggrieved the assessee was in appeal before the Id. CIT(A).

5. The first appellate authority had upheld the addition made by the Id. A.O. on the ground that the appeal has been filed belatedly by 82 days for which the assessee has not filed request for condoning the said delay. The Id. CIT(A) dismissed the appeal filed by the assessee on this note.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. The learned Authorised Representative ('Id. AR' for short) for the assessee vehemently contented that the first appellate authority has failed to condone the delay in filing the appeal without giving sufficient opportunity of hearing to the assessee. The Id. AR further contended that the assessee had filed the appeal in physical mode within the period of limitation and that the delay in e-filing the appeal was condoned by the CBDT vide Circular No. 20/2016 dated 26.05.2016. The Id. AR prayed that the issue may be remanded back to the file of the Id. CIT(A) for deciding the grounds on the merits of the case after duly condoning the delay in filing the appeal.

8. The learned Departmental Representative ('Id.DR' for short), on the other hand, controverted the said fact and stated that the assessee has not given "sufficient cause" for filing the appeal with a delay of 82 days before the first appellate authority. The Id. DR also stated that the assessee has failed to file an affidavit along with the supporting documentary evidence to substantiate that there was "sufficient cause" for the said delay. The Id. DR relied on the order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The Id. AR for the assessee had brought our attention to the written submission made by the assessee to the Id. CIT(A) vide its submission dated 01.06.2023 where at para 5, the assessee has elaborated that it is covered by the board Circular No. 20/2016 dated 26.06.2016 for condoning the delay in e-filing the appeal. The relevant extract of the said submission is extracted hereunder for ease of reference:

5. Subsequently, CBDT has also considered this hardships being faced by the tax-payers as many of them were unable to file the appeal electronically due to the lack of knowledge about e-filing procedure and/or technical issues in e-filing. In order to mitigate the inconvenience, the mandatory requirement of filing the appeal electronically was extended to 15.06.2016 for those assessee whose time limit expired on or before 15.05.2016 vide Circular No.20/2016 dated 26.05.2016. The copy of the circular is attached as Annexure-3. The relevant portion of the circular is reproduced hereunder:-

"Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

2 The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15.05.2016 can be filed up to 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

3 In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15.06.2016 **Such appeals would also be treated as appeals filed within time.**"

(Emphasis provided by us)

6. In the view of above circular, the appellant filed the appeal electronically successfully on 14.06.2016 which was within the time limit extended by CBDT as per the above notification. Keeping in view the said circular, appellant had duly mentioned in the Form 35 that there is no delay in filing the appeal. The copy of appeal filed electronically is attached as Annexure-

10. From the above observation, we deem it fit to hold that the assessee had "sufficient cause" for the delay in filing the appeal before the first appellate authority and we, therefore, direct the Id. CIT(A) to condone the said delay and to decide the issues raised by the assessee on the merits of the case after giving sufficient opportunity of hearing.

11. We remand this issue to the file of the Id. CIT(A) to adjudicate the grounds afresh based on the submission and the evidences filed by the assessee.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20.11.2023.

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 20.11.2023

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai