

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.553 to 557/Hyd/2023		
Assessment Years: 2013-14, 2014-15, 2016-17 & 2017-18		
Candid Industries Ltd Hyderabad PAN:AAACE4493Q (Appellant)	Vs.	Dy. C. I. T. Circle 1(2) Hyderabad (Respondent)
Assessee by:	Shri M.V. Joshi, CA	
Revenue by:	Smt. Helen Ruby Jesindha,DR	
Date of hearing:	28/12/2023	
Date of pronouncement:	28/12/2023	

ORDER

Per Bench:

The above batch of appeals filed by the assessee are directed against the separate orders of the learned CIT (A)-NFAC Delhi, relating to A.Ys 2013-14, 2014-15, 2016-17 & 2017-18 respectively.

2. In all these appeals, the assessee is aggrieved by the order of the learned CIT (A) NFAC in not condoning the delay and dismissing the appeal in limini and thereby sustaining the various additions made by the Assessing Officer.

3. First we take ITA No.553/Hyd/2023 as the lead case. Facts of the case, in brief, are that on the basis of information

that the assessee received rent of Rs.8,50,000/-time deposit with a banking company of Rs.60,00,000/-cash deposit with a banking company of Rs.1,02,16,760/- and sale or purchase of Motor Vehicles of Rs.69,25,115/-, the case was reopened u/s 147 by recording the reasons and accordingly notice u/s 148 was issued to the assessee on 29.3.2021. However, the assessee did not file any return in response to notice u/s 148 nor had filed any return u/s 139(1) of the I.T. Act. Subsequently, statutory notice u/s 142(1) was also issued and served on the assessee. However, neither any return was filed nor any details were furnished. The Assessing Officer issued notice u/s 133(6) of the I.T. Act to the Branch Manager, Bank of Baroda, Hyderabad to obtain a copy of account statement of the assessee. However, there was also no response from the Bank of Baroda, Hyderabad. In view of the persistent non compliance of the assessee, the Assessing Officer completed the assessment u/s 144 of the I.T. Act determining the total income of the assessee at Rs.2,39,91,880/- by making the following additions:

Return income of the assessee	No ITR filed
Addition on account of unexplained cash credit u/s 68	Rs.1,02,16,760/-
Addition on account of unexplained income of Time Deposit u/s 69A	Rs. 60,00,000/-
Addition on account of unexplained income of rent u/s 69A	Rs.8,50,000/-
Addition on account of unexplained income of sale or purchase of vehicles u/s 69A	Rs. 69,25,115/-
Total Income	Rs. 2,39,91,875/-
Rounded off	Rs. 2,39,91,880/-

4. The assessee filed an appeal before the learned CIT (A) NFAC with a delay of 164 days. The learned CIT (A) did not condone the delay and dismissed the appeal filed by the assessee in limini.

5. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee referring to the petition for condonation of delay before the learned CIT (A) submitted that the assessment order was passed u/s 147 r.w.s. 144 of the I.T. Act on 26.3.2022. The appeal was supposed to be filed with the learned CIT (A) NFAC within 30 days of the receipt of the order i.e. on or before 24.4.2022. He submitted that the appeals could not be filed before the learned CIT (A) NFAC in time due to covid and post covid effect and ill health of the Director as well as the Accountant who were looking after the I.T. matters. He submitted that the appeal was filed immediately after the Accountant recovered with a delay of 164 days. He submitted that an affidavit was also filed before the learned CIT (A) to this effect but unfortunately, the learned CIT (A) without considering the contents of the affidavit dismissed the appeal as defective on account of delay in filing of the appeal and thereby sustaining the various additions. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case. He submitted that since the assessment order has also been passed u/s 144 of the I.T. Act which is during the covid period and the learned CIT (A) has dismissed the appeal in limini, therefore, the matter should be restored to the file of the Assessing Officer for fresh adjudication.

7. The learned DR, on the other hand, heavily opposed the arguments advanced by the learned Counsel for the assessee. She submitted that neither the assessee filed any return u/s 139(1) nor filed any return in response to notice u/s 148. The assessee also filed appeal before the learned CIT (A) NFAC with a delay of 164 days without any reasonable cause. Under these circumstances when the assessee has no regards for the statutory notices, the order passed by the learned CIT (A) dismissing the appeal in limini is justified.

8. We have considered the rival arguments made by both sides, perused the orders of the Assessing Officer and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We find the assessment was reopened u/s 147 and notice u/s 148 of the I.T. Act was issued and served on the assessee on 29.3.2021 which was during the prevailing Covid period at that time. We find in response to notice u/s 148 and u/s 142(1) the assessee neither filed any return nor replied to the statutory notices for which the Assessing Officer was constrained to pass the order u/s 144 of the I.T. Act determining the total income of the assessee at Rs.2,39,91,880/-. Since the assessee filed the appeal before the learned CIT (A) NFAC with a delay of 164 days, the learned CIT (A) dismissed the appeal in limini without condoning the delay. It is the submission of the learned Counsel for the assessee that the notice u/s 148 was issued during the Covid period which was at its peak during that period for which the assessee could not file the return in response to notice u/s 148 of the I.T. Act. It is also his submission that the delay in filing the appeal before the learned CIT (A) is not deliberate but due to the ill health of the Director as well as the Accountant due to

covid for which an affidavit was also filed before the learned CIT (A) NFAC. It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the Assessing Officer regarding the various issues that have been raised by him. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant an opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

ITA Nos.554 to 557/Hyd/2023

9. In all these appeals, the learned CIT (A) NFAC has not condoned the delay and dismissed the appeals filed by the assessee in limini. We find the assessment orders for A.Y 2014-15 was passed u/s 144 of the I.T. Act and thereafter penalty u/s 271(1)(c) of the I.T. Act was levied which is the subject matter of appeal in ITA No.554/Hyd/2023. Similarly in ITA No.555/Hyd/2023 for the A.Y 2016-17, the assessment order has been passed u/s 147 r.w.s. 144. In A.Y 2017-18, the assessment order has been passed u/s 147 r.w.s. 144 of the Act and thereafter penalty u/s 271AAC(1) has been levied. Considering the totality of the facts of the case and in the light of our observation in ITA No.553/Hyd/2023 in the preceding paragraphs, we restore all these appeals to the file of the Assessing Officer for fresh adjudication after giving due opportunity of being heard to the

assessee. The Assessing Officer shall decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer and explain his case without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee in all these appeals are allowed for statistical purposes.

10. In the result, all the five appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Open Court itself at the time of hearing i.e. on 28th December, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) VICE-PRESIDENT
--	---

Hyderabad, dated 28th December, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s.Candid Industries Ltd C/o P Murali & Co. C.A, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT, Circle 1(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order