

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. 259/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Anthelio Business Technologies Vs. Assistant Commissioner of  
Private Limited, Income Tax,  
Hyderabad Circle-1(1),  
[PAN No. AADCC2554M] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Dhanesh Bafna and  
Shri Hirali Desai, ARs

राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 21/12/2023

घोषणा की तारीख/Pronouncement on: 29/12/2023

आदेश / ORDER

**PER K. NARASIMHA CHARY, J.M:**

Aggrieved by the order dated 29/03/2022 passed by the learned Pr. Commissioner of Income Tax, Hyderabad-1 ("Ld. CIT") under section 263 of the Income Tax Act, 1961 (for short "the Act"), in the case of Sri Anthelio Business Technologies Private Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that assessee is a Private limited company, was deriving income from its business in information technology. It filed the return of income for the assessment year 2017-18, declaring income of Rs. 9,01,38,890/-. Assessment was complete by order dated 07/11/2019 by way of order under section 143(3) of the Act. Subsequently, on a perusal of record, the learned PCIT found that the reimbursement of ESOP to the tune of Rs. 3,03,27,856/- received by the assessee from its subsidiary company is nothing but the consideration in view of sales/services and must have been treated as income of the company under section 58 of the Act, but since the said income was not offered and also was overlooked by the learned Assessing Officer, the assessment order is erroneous insofar as it is prejudicial to the interest of Revenue. Learned PCIT, therefore, while exercising jurisdiction under section 263 of the Act, set aside such assessment order and directed the learned Assessing Officer to verify the issue relating to ESOP and pass an order according to law.

3. Aggrieved by such an action of the learned PCIT, assessee preferred this appeal with a delay of 348 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 of the learned PCIT for the views of the learned Assessing Officer. Learned AR 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. He 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 the assessee was advised to file an appeal not only against the consequential order, but also against the order under section 263 of the Act.

4. He further submitted that in this case, order under section 263 of the Act was passed on 29/03/2022, mail was sent by the assessee to the consultant, seeking advice on 263 order on the same day, advice was received on 07/04/2022, assessee again sought advice from another consultant on 08/02/2023, advice was received from the second auditor on 03/03/2023 advising to challenge the 263 order before the Tribunal, consequently assessment order giving effect to order under section 263, was passed on 27/03/2023 and this appeal was filed on 11/05/2023. he, therefore, submits that the delay is properly explained.

5. 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. She submits that the impugned order was passed on 29/03/2022 and for about 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. She 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, CSK Realtors Limited vs. ITO in ITA No. 233/Hyd/2023, for the assessment year 2017-18, by order dated 13/09/2023, and M/s. Kancherla Medical Services Private Limited vs. DCIT in ITA No. 229/Hyd/2023, for the assessment year 2017-18, by order dated 10/10/2023, wherein this sort of conduct of the assessee was deprecated.

6. 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 sought advice from the consultant and pursuant there to they preferred to pursue the assessment proceedings in the lines of the 263 order, but subsequently, on the advice of another consultant, they are challenging the 263 order. Claiming that it did not receive proper legal advice at the earliest point of time, the assessee came forward with this appeal with a delay of 348 days.

7. Impugned order was passed on 29/03/2022 and on the very same day, the assessee sought advice of the consultants in respect of the action to be taken about the 263 order. Advice was received on 07/04/2022. On a perusal of the mail dated 07/04/2022, we find that the consultant clearly advised that the assessee may file an appeal before the ITAT against the order passed by learned PCIT under section 263 of the Act to quash the same and thereby no revision proceedings will be initiated by the learned Assessing Officer in case the order is quashed. The consultant further said that the assessee may accept the order under section 263 of the Act and comply with the revision proceedings initiated by the learned Assessing

Officer by responding to all the notices issued in future and the assessee has an option to submit detailed facts before the learned Assessing Officer for his verification and may object for any addition to be made on the issue of ESOP reimbursement. We further find from the e-mail dated 03/03/2023 that this 263 order should have been challenged before the ITAT and there are very limited options to challenge the current proceedings, perhaps the revision proceedings before the learned Assessing Officer.

8. It is, therefore, clear that the advice rendered by the consultant on 29/03/2022 is by no means an ambiguous one or misleading one, but on the other hand, it made the options clear to the assessee. First option is to challenge the order under section 263 and to avoid the revision proceedings before the learned Assessing Officer and the second option is to accept the order under section 263 and to proceed with the revision proceedings before the learned Assessing Officer. Assessee had chosen the first option to proceed with the revision proceedings before the learned Assessing Officer by furnishing the requisite information. There is nothing on record to show that it is not a conscious decision taken by the assessee. It is only on realising that there is very limited option to challenge the consequential proceedings before the learned Assessing Officer, the assessee obtained the advice to challenge the order under section 263 of the Act.

9. Even after obtaining the second advice, the assessee did not promptly proceed with the challenge of the 263 order, before the learned Assessing Officer concludes the consequential proceedings. The assessee adopted wait and see method to have the best of both the worlds. If the

learned Assessing Officer grants the relief, assessee is satisfied. If the learned Assessing Officer does not grant the relief, then to revert back to challenge the 263 order on the point of jurisdiction and to have the benefit thereof. We are in agreement with the learned DR in her submission that if this sort of 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.

10. In the case of SRK Infracon (India) Pvt. Ltd., CSK Realtors Limited and M/s. Kancharla Medical Services Private Limited (supra), Co-ordinate Benches of the Tribunal considered this aspect of assessee filing the appeal with considerable delay, after having lost the case in consequential proceedings. It was consistently 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 advertent to the merits of the appeal, dismiss the same.

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

Order pronounced in the open court on this the 29<sup>th</sup> day of December, 2023.

Sd/-  
**(RAMA KANTA PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 29/12/2023

TNMM

Copy forwarded to:

1. Anthelio Business Technologies Private Limited, Plot No. H7 & H8, SDB-3, 3<sup>rd</sup> Floor, A Wing, SPICOT IT Park, Old Mahabalipuram Road, Nayallur Post, Siruseri, Chennai, Kancheepuram.
2. Asst. Commissioner of Income Tax, Circle-1(1), Hyderabad.
3. Pr.CIT, Hyderabad-1.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

TRUE COPY

ASSISTANT REGISTRAR  
ITAT, HYDERABAD