

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.487/Ahd/2023
Assessment Year : 2013-14

Nirma Chemical Works Pvt. Ltd. Nirma House Ashram Road, Near Income Tax Circle Ahmedabad-380 009 Gujarat	v.	The Dy. Commissioner of Income- Tax Circle-3(1)(1) Ahmedabad Gujarat
PAN: AAACN 5353 L		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Hemanshu Shah, CA
Revenue by :		Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/01/2024 &
23.01.2024
घोषणा की तारीख /Date of Pronouncement: 23/01/2024

आदेश/O R D E R

PER Coram:

This appeal filed by assessee is directed against the appellate order dated 19/05/2022 passed by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)" in short] under section 250 of the Income Tax Act, 1961 (hereinafter called "the Act") for Assessment Year 2013-14 (DIN & Order No.ITBA/ NFAC/S/250/2022-23/1043081956(1)), the appellate proceedings have arisen before Ld.CIT(A) from rectification order dated 16/02/2022 passed by ld. Assessing Officer(hereinafter called "the AO") u/s 154 of the 1961 Act (DIN & Order

No.ITBA/COM/F/17/2021-22/1039791988(1)). The appeal was firstly heard by Division Bench of ITAT, Ahmedabad on 18.01.2024. While studying file and dictating order, it was observed that the assessee deposited appeal fee of Rs. 500/- only while filing appeal with ITAT, while the appeal fee payable as per Section 253(6)(c) payable by assessee is Rs. 10,000/- , and hence the appeal fee paid was deficient by Rs. 9,500/- . The appeal was put for clarification before Division Bench on 23.01.2024. When the matter came up for hearing before DB on 23.01.2024 for clarification with respect to deficient fee, ld. Counsel for the assessee submitted that the assessee was of the view that the appeal has arisen from the rectification order u/s 154 and hence , the assessee was under a bonafide belief that the appeal fee payable is Rs. 500 as provided u/s 253(6)(d) of the 1961 Act . The ld. DR submitted that since the appeal has arisen from assessment order u/s 143(3) which computed income of the assessee which was later rectified by the AO u/s 154, and the assessee is seeking rectification of the said rectification order by filing rectification application u/s 154 to rectify rectification order u/s 154 , the appeal fee payable is covered by Section 253(6)(c) and not Section 253(6)(d). Thus, the appeal fee paid was deficient by Rs. 9500/- which the assessee is required to deposit, were the contention of ld. DR. The ld. counsel for the assessee submitted that the assessee will deposit the deficient fee of Rs. 9,500/- , although the assessee was earlier having a bonafide belief that the assessee was liable to deposit an appeal fee of Rs. 500 as provided u/s 253(6)(d) . Now, today i.e. 24.01.2024 , the assessee has filed challan of Rs. 9,500/- with Registry, vide challan number 01994 dated 24.01.2024 (BSR code 6360014), Axis Bank(CIN 24012400080241UTIB) for Rs. 9500/- , towards deficient appeal fee. The challan is placed on record. Now, we proceed to adjudicate this appeal.

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad (hereinafter called "the Tribunal), which reads as under:

1) *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has erred in points of law and facts.*

2) *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in passing appellate order dismissing the appeal as withdrawn after considering the submission filed for another appeal No. NFAC/2019-20/10094831 of Asst. Year 2020-21.*

3) *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in passing order which is infructuous. The appeal order required to be quashed.*

4) *In law and in facts and circumstances of the Appellant case, the learned Commissioner of Income-tax (Appeals) has grossly erred in dismissing following grounds raised in appeal*

i) *"Short Granting refund of Rs.35,180/- against refund determined Rs.76,09,770/- vide order u/s 154 of I.T. Act dated 16-02-2022."*

ii) *"Not granting interest on Self Assessment tax paid on 28-09-2013 for Rs.5,30,00,000/-."*

iii) *Short granting interest u/s 244A of I.T. Act.*

iv) *"Segregating the refund issued into tax refund and interest refund and adjusting the tax refund from tax refund due and interest refund from interest refund due instead of adjusting the entire refund granted first against the interest refund due and thereafter against the tax refund due.*

5) *Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time."*

3. The brief facts of the case are that the assessee is engaged in the business of financing and trading in shares and securities. The assessee has filed its return of income for the impugned assessment year on 14/10/2013 declaring total income of Rs.76,65,29,780/- and book profit at Rs.78,91,96,709/-. The return of income was processed by Revenue u/s.143(3) of the I.T. Act, 1961 [hereinafter referred to as "the Act"] and the income was assessed at Rs.77,16,37,980/- and book profit was recomputed at Rs.79,43,04,912/-, the disallowance was made of Rs.51,08,203/- by the AO u/s 14A of the 1961 Act. The order was later rectified by the AO u/s 154 of the 1961 Act on 28.03.2021. Thereafter, the assessee filed rectification application u/s 154 of the 1961 Act seeking rectification of the rectification order dated 28.03.2021 passed by Revenue u/s 154 of the 1961 Act, which rectification application filed by the assessee was processed by the AO vide order dated 16/02/2022 u/s 154 of the 1961 Act.

3.1. The assessee filed first appeal before Ld.CIT(A) against the rectification order dated 16.02.2022 passed by Revenue u/s.154 of the Act, and Ld.CIT(A) dismissed the appeal of the assessee vide appellate order dated 19.05.2022 passed u/s 250(6) of the 1961 Act, by holding as under:

"Nirma Chemical Works Private Limited(the appellant) has filed this appeal on 29-03- 2022 for the Assessment Year 2013-14, against the order u/s. 154 of the Income Tax Act, 1961 dated 16-02-2022, passed by the GUJ - C - (105)(1). As per declaration in Form No.35, the date of service of the order is stated to be on 16-02-2022. There is a delay of 11days in filing the appeal. Assessee has filed condonation of delay stating that there was some clerical mistake. Condonation is hereby allowed.

2. Hearing notice was issued on 03/05/ 2022 for submission by 11/05/2022 and in response the assessee has filed appeal withdrawal request letter dated 11/05/2021 and the same is reproduced below:

"We humbly wish to submit as under for Your Honour's kind consideration regarding various grounds of appeal. May we request your Honour to allow us to withdraw this appeal as the addition of Rs. 2,42,569/- made in the first intimation u/s. 143(1) of I.T. Act dated 20-09- 2021 against original return of income by CPC, Bengaluru was not made addition vide second intimation passed u/s. 143(1) of I.T. Act on 24-11-2021 against revised return of income filed on 12.05.2021. Copy of second intimation dtd. 24-11-2021 is enclosed."

*Considering the request of the assessee, the appeal is **dismissed** as withdrawn."*

3.2. The Ld.CIT(A), in nutshell, dismissed the appeal filed by the assessee as withdrawn, vide appellate order dated 19.05.2022.

4. The assessee has filed second appeal before the ITAT. At the outset, the ld. counsel for the assessee submitted that the appeal filed by the assessee was filed belatedly before the Tribunal with a delay of 324 days beyond the time prescribed u/s 253(3) of the 1961 Act. The ld. Counsel for the assessee submitted that the assessee has duly filed condonation of delay application, praying for condonation of delay. It was submitted that the assessee has filed an application before Ld.CIT(A) for withdrawal/dismissal of its appeal for AY 2020-21, and no such application for withdrawal of assessee's appeal for assessment year 2013-14 was ever filed by the assessee before ld. CIT(A). The copy of application filed by the assessee before ld. CIT(A) dated 11.05.2022 for assessment year 2020-21 for withdrawal of its appeal is placed on record in file. It was submitted that Ld.CIT(A)

erroneously took the said withdrawal application of having been filed for AY 2013-14, and erroneously dismissed the appeal of the assessee for assessment year 2013-14. The ld. Counsel for the assessee drew our attention to the intimation dated 20.09.2021 issued by department u/s.143(1) of the Act for AY 2020-21(paper book page 15-30/refer page 25), wherein there was an addition made of Rs.2,42,569/- (Rs. 8,454 u/s 36 and Rs. 2,34,115 u/s 43B) for assessment year 2020-21. It was submitted that this is the amount mentioned in the ld. CIT(A) appellate order for assessment year 2013-14 , while dismissing the appeal of the assessee. Thus, it was submitted that when the appellate order was received by the assessee from the Ld.CIT(A) for assessment year 2013-14, it missed the attention of the concerned person looking after taxation matter that ld. CIT(A) has erroneously dismissed the appeal for assessment year 2013-14 as being withdrawn, while the assessee made request for withdrawal of appeal of the assessee for the assessment year 2020-21 . It was submitted that serious and grave prejudice has been caused to the assessee by erroneously dismissal of the appeal of the assessee by ld. CIT(A) for assessment year 2013-14. It was submitted that immediately on coming to know of the serious and grave prejudice being caused to the assessee by ld. CIT(A), the assessee filed second appeal with Tribunal. Thus, it is prayed that there was no malafide intention of the assessee in filing this appeal belatedly by 324 days beyond the time stipulated u/s 253(3) of the 1961 Act, and prayers were made to condone the delay in filing this appeal belatedly with ITAT, and set aside / restore the matter back to file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merits for the impugned assessment year.

5. The ld.DR, on the other hand, objected to the prayer of the assessee for condonation of delay.

6. After hearing both the parties, we are of the considered view that delay of 324 days in filing this appeal belatedly by assessee before ITAT beyond the time stipulated u/s 253(3) of the 1961 Act needs to be condoned as there is no malafide intention on the part of the assessee for filing this appeal belatedly as the assessee will not benefit from filing this appeal belatedly. Infact, there is a serious and grave prejudice caused to the assessee by an act of ld. CIT(A) in dismissing the appeal of the assessee as withdrawn for the impugned assessment year, while the assessee filed withdrawn application for assessment year 2020-21 before ld. CIT(A) and not for the assessment year 2013-14. If technicalities are pitted against the justice, the Courts will lean towards the advancement of substantial justice. Thus, we condone this delay of 324 days in filing this appeal belatedly by the assessee beyond the time stipulated u/s 253(3) of the 1961 Act, and we now proceed to adjudicate the appeal of the assessee.

6.1. The assessee has already advanced its argument which are recorded above, and the ld.DR has fairly submitted that department has no objection if the matter is restored back to the file of ld.CIT(A) for fresh adjudication on merits.

7. After considering the entire material on record, we are of the considered view that Ld.CIT(A) has committed serious and grave prejudice to the assessee by dismissing the appeal of the assessee for impugned assessment year 2013-14 as withdrawn, while the assessee had submitted an application for withdrawal of its appeal filed before ld. CIT(A) for AY 2020-

21 , and not for the AY 2013-14 which is now before us. Thus, after considering the entire matter on record and hearing both the parties, we are of the considered view that the appellate order passed by Ld.CIT(A) is to be set aside , and the matter is to be restored back to the file of ld.CIT(A) for fresh adjudication on merits in accordance with law, after providing reasonable opportunity of being heard. The assessee is directed to co-operate with ld. CIT(A) and furnish all necessary information and documents called for by ld. CIT(A) for adjudication of the appeal. The appellate order passed by ld. CIT(A) is set aside and matter is restored back to ld. CIT(A) for fresh adjudication . We clarify that we have not commented on the merits of the issue in this appeal and all the contentions are kept open. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 23rd January, 2024 at Ahmedabad in the presence of both the parties, and reduced to writing and signed on 24th January, 2024.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 24/01/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)-Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad