IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.11/Hyd/2024		
Assessment Year: 2018-19		
Indovation Renewables Limited, Plot No.16, 1st Floor, Srila Realty Layout, Madinaguda, Miyapur, Serilingampally Mandal, Telangana. PAN : AABCM3678G.	Vs.	The Income Tax Officer, Ward 16(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Mohd. Afzal, Advocate, appeared for Shri Sk. Gupta, Advocate.	
Revenue by:	Shri Rohit Mujumdar, Sr.A.R.	
Date of hearing:	22/01/2024	
Date of pronouncement:	25/01/2024	

O R D E R

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2018-19 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.28.11.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act").

2. The grounds raised by the assessee read as under :

> *" 1. In the facts and circumstances of the case, the order of the CIT(A) is not justifiable.*
>
> *2. In the facts and circumstances of the case, the CIT(A) ought to have considered that the reasons submitted for delay are justifiable and genuine.*
>
> *3. In the facts and circumstances of the case, the CIT(A) ought to have adjudicated on merits.*
>
> *4. In the facts and circumstances of the case, the CIT(A) ought to have considered that the AO was not justified making the disallowance of Rs.48,39,400/- on account of professional charges considering the evidences and submissions.*
>
> *5. In the facts and circumstances of the case, the CIT(A) ought to have considered that the AO was not justified making the disallowance of Rs.11575200/- on account of lease rental considering the evidences and submissions.*
>
> *6. In the facts and circumstances of the case, the CIT(A) ought to have considered that the expenditure of Rs.48,39,400 and 11,57,200/- are allowable expenditure u/s 37 of the Income Tax Act.*
>
> *7. In the facts and circumstances of the case, the CIT(A) ought to have considered that the reasons recorded by the Ao for said expenditure are not justifiable."*

3. The brief facts of the case are that assessee is a domestic company filed its Return of Income for AY 2018-19 on 30-03-2019 admitting loss of Rs.44,42,869/-. The case was selected for complete scrutiny for verifying expenses relating to entities not registered under GST. Notice u/s 143(2) of the Act was issued on 28.09.2019. As there was no response, notice u/s 142(1) of the Act was issued on 06.02.2020 calling for details. Assessee thereafter uploaded his replies on various dates. After verification of the replies submitted by the assessee, Assessing Officer completed the assessment u/s 143(3) r.w.s 143(3A) and 143(3B) vide order dated 08-04-2021 determining

the total income at Rs.16,07,731/- interalia making additions / disallowances at Rs.48,93,400/- towards Professional charges and Rs.11,57,200/- towards land lease.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the ld.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before us, ld.AR submitted that though the assessee explained the reasons for delay before the ld.CIT(A), the ld.CIT(A) has not condoned the delay in filing the appeal and thereby dismissed the appeal of assessee. The contents of the delay application filed before the ld.CIT(A) reads as under :

> *"The MD of company is a technical professional and is not aware of the working of the ITBA portal. He depends on accounts personnel for all tax compliances. During the period when the assessment order was passed the second wave of Covid-19 was in its peak and many of the employees left. The accounts person who was looking after tax compliances also left and the management of the company was in the dark regarding the assessment order passed. The management became aware of the assessment order and the need to file appeal after new accounts team took over and reviewed all the pending matters. Hence, it is submitted that the delay is not intentional and may please be condoned."*

6. In this regard, Ld.AR relied upon the direction of Hon'ble Supreme Court in the Suo Motu proceedings in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 wherein it was held that in cases, where the limitation would have expired during the period between 15/03/2020 and 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation

period of 90 days from 01/03/2022, and in the event of actual balance period of limitation remaining with effect from 01/03/2022 is greater than 90 days, that longer period shall apply. He further submitted that assessee has a good case on merit and therefore, the merit should not be pitted against the non-condonation of delay by the ld.CIT(A).

7. Per contra, the ld.DR has not raised any objection for remanding the matter back to the file of lower authorities.

8. I have heard the rival submissions and perused the material on record. In this connection, the assessee has stated that the delay in prosecution of the appeal and filing of the present appeal was due to lock down imposed by the central government as preventive measures to control the spread of Covid-19 from 23/03/2020, caused the impugned delay in filing the appeal belatedly. Further, as referred by ld. AR, the Hon'ble Supreme Court in the case of M.A.No. 21/2022 in M.A.No. 665/2021 in SMW(C) No.3 of 2020 by order dated 10/01/2022 had extended the period of limitation. In view of the above circumstances and respectfully following the direction of Hon'ble Supreme Court and relying upon the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, I hold that such a delay in filling the appeal was supported by cogent reasons and hence, deserves to be condoned so as to make way for the cause of substantial justice. Thus, the limitation period applicable to the appeal is covered by the above

said decision and therefore, the appeal shall be treated as filed within the period of limitation.

9. As the ld.CIT(A) has not decided the appeal of assessee on merits, therefore, I am of the view that the ends of justice will be met if the matter may be sent back to the file of ld.CIT(A) with a direction to decide the issue after verifying all the documents/ evidence. The above said exercise be carried out after considering the documents available on record and affording the opportunities of hearing to the assessee in accordance with law. The assessee shall be at liberty to file documents, if any, as required for proving its case and the ld.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 25th January, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 25th January, 2024.
TYNM/sps

Copy to:

S.No	Addresses
1	Indovation Renewables Limited, Plot No.16, 1st Floor, Srila Realty Layout, Madinaguda, Miyapur, Serilingampally Mandal, Telangana.
2	The Income Tax Officer, Ward 16(3), Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order