

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2746/Del/2022
(Assessment Year: 2018-19)**

Agilent Technologies India P. Ltd.,
Ground Floor, Elegance Tower,
Plot No.8, District Centre,
Jasola,
New Delhi – 110 025.

vs. DCIT, Circle 1 (1),
New Delhi.

(PAN : AABCA9874A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Agarwal, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 24.01.2024
Date of Order : 30.01.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 28.09.2022 for the assessment year 2018-19.

2. Although assessee has raised various grounds, Id. Counsel of the assessee pressed ground nos.2 & 3 which read as under :-

“2. On facts and circumstances of the case and in law the Ld. CIT (A) erred in rejecting Appellant’s appeal without affording

any opportunity of being heard to the Appellant to explain the alleged delay in filing said appeal.

3. On the facts and circumstances of the case and in law the Ld. CIT (A) erred in holding that filing of appeal was delayed by 110 days and further contending that the Appellant was required to file for a request for condonation of delay, failing which the appeal filed was rejected.”

3. Brief facts of the case are that assessee is a company registered under the Companies Act, 2013 and is engaged in the business of trading and providing after sale services of Agilent group's products in Indian market. In this case, the assessee company filed return of income for A.Y. 2018-19 on 26.11.2018 declaring total income at Rs.39,72,26,280/-. The case was selected for complete scrutiny through CASS for following reasons:

- (i) Deduction from Total Income (Chapter VI-A) (Business ITR).
- (ii) Large "any other amount allowable as deduction" claimed in schedule BP of return.

Accordingly, Notice u/s 143(2) of the Income-tax Act, 1961 (for short ‘the Act’) dated 22.09.2019 was issued and duly served on the assessee by AO. Subsequently, notices u/s 142(1) of the Act, calling for certain details were also issued during assessment proceedings. In response to notices issued, the appellant filed its detail/reply through ITBA portal. The assessee has claimed deductions in Computation of Income amounting to Rs.57,75,178/- (Rs.30,00,000/- on account of sales Tax and Rs.27,75,178/- on account of SAD Protest payment). The order u/s 9(2) of the CST Act, 1956 read with section 36(1) of KVAT Act, 2003 was passed by the Assistant

Commissioner of Audit 5(2) VO-5, Bangalore on 28-06-2019 and order granting refund was passed by the Assistant Commissioner (Refund), Office of the Principal Commissioner of Customs, Airport & AIR Cargo Commissioner, Bangalore on 26.04.2018. The deduction of Rs.57,75,178/- claimed by the assessee on account of Sales Tax payment and SAD payment directly claimed in computation of income is disallowed by AO and added to the returned of income of the assessee on the ground that the liability of excise and sales tax was finally determined in succeeding years.

4. Upon assessee's appeal, ld. CIT (A) dismissed the appeal of the assessee by holding that there was 110 days delay and no condonation application was filed. Concluding part of the ld. CIT (A) order is as under :-

“In the present case, appellant has failed to prove beyond any shadow of doubt that it had acted diligently and was not guilty of negligence. I therefore proceed to reject this appeal filed by appellant. In result, the appeal stands dismissed. In view of the fact that appeal has been dismissed on the ground of absence of petition for condonation of delay, I am not discussing the case on merits.”

5. Against the above order, assessee filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that the said period was Covid period and the time period for filing the appeal was stood enhanced by the Hon'ble Apex Court in Misc. Application No.665 of 2021 in SMC (C) No.3 of 2020 vide order dated September 23, 2021. Ld. Counsel for the assessee

also referred to CBDT Circular No.10/2021 dated 25th May, 2021. Ld. Counsel submitted that by way of aforesaid order of Hon'ble Apex Court, due to the prevailing Covid pandemic, time limit for filing the appeal stood extended. He further submitted that ld. CIT (A)'s order dismissing the appeal for 110 days delay is without application of mind as there was no delay as such. He further prayed that no opportunity was given by the ld. CIT (A) to explain the reason of the delay and the fact that there was actually no delay.

7. In view of the above, in the interest of justice, we remit the issue to ld. CIT (A). Ld.CIT (A) should consider the issue afresh after giving the assessee adequate opportunity of being heard. Delay before the ld. CIT (A) stands condoned.

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

Order pronounced in the open court on this 30th day of January, 2024.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 30th day of January, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**