

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 343/CHD/2023

निर्धारण वर्ष / Assessment Year : 2013-14

Sangam Resorts Pvt. Ltd., Village-Rangri, Post Office – Manali, Distt.-Kullu, Manali (HP).	बनाम VS	The ITO, Kullu, Distt. Kullu (HP).
स्थायी लेखा सं./PAN /TAN No: AAHCS2287B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ranvijay Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 29.01.2024

उदघोषणा की तारीख/Date of Pronouncement : 30.01.2024

VIRTUAL HEARING

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

This is assessee's appeal for assessment year 2013-14 against the order dated 21.03.2023 passed by the ld. CIT(A) NFAC, Delhi. The following grounds have been taken :

- 1. On the facts and circumstances of the case and in law, the CIT(A) erred in dismissing the appeal in limine.*
- 2. On the facts and circumstances of the case and in law, the CIT (A) erred in passing ex-parte order.*
- 3. On the facts and circumstances of the case and in law, the CIT (A) erred in passing order without providing proper opportunity of being heard.*

4. *On the facts and circumstances of the case and in law, the order passed by CIT (A) is against the principles of natural justice.*
5. *On the facts and circumstances of the case and in law, the penalty order passed by the assessing officer is bad-in-law, and without jurisdiction and CIT (A) erred in not holding so.*
6. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 45,22,000/- made by the assessing officer on the account of unsecured loans.*
7. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 43,10,157/- made by the assessing officer on the account of capital work in progress.*
8. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 27,81,205/- made by the assessing officer on the account of disallowance of employee benefit expenses.*
9. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 1,96,630/- made by the assessing officer on the account of disallowance u/s 40(i)(ia) of the Act.*
10. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 56,12,280/- made by the assessing officer on the account of disallowance trade payables as alleged bogus liability.*
11. *On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition of Rs. 40,51,920/- made by the assessing officer on the account of disallowance current liabilities as alleged bogus liability.*
12. *On the facts and circumstances of the case and in law, the assessing officer erred in charging interest u/s 234B & 234C of the Act without giving credit for seized cash.*
13. *On the facts and circumstances of the case and in law, the assessing officer erred in initiating penalty proceedings u/s 271A of the Income Tax Act, 1961.*
14. *On the facts and circumstances of the case and in law, the assessing officer erred in initiating penalty proceedings u/s 271(l)(c) of the Income Tax Act, 1961.”*

2. The brief facts of the case are that the assessee filed its return of income for assessment year 2013-14 on 25.09.2013

declaring total loss at Rs.1,50,70,312/-. The case was selected for scrutiny to verify large share application money received against un-allotted shares. Statutory notices were issued by the Assessing Officer to submit details which were complied by filing the details. During the course of assessment proceedings, the AO called for books of account which the assessee failed to produce and adjournments were taken under one account or the other. Accordingly, the Assessing Officer passed order u/s 144 on 28.03.2016 determining total income at Rs.64,03,880/- after making following disallowances :

a) Unsecured Loans raised during the year -	Rs. 45,22,000/-
b) Capital work under the head WIP	Rs. 43,10,157/-
c) 50 % of Employee benefit expenses	Rs. 27,81,205/-
d) u/s. 40(A)(ia) - unexplained expenses	Rs. 1,96,630/-
e) Unexplained - Trade Payables	Rs. 56,12,280/-
f) Unexplained trade liability	Rs. 40,51,920/-

3. Aggrieved by this order of the Assessing Officer, the AO went in appeal before the ld. CIT(A).

4. Before ld. CIT(A), the assessee filed appeal on 19.09.2016, which was to be filed on or before 30.04.2016. Therefore, there was a delay of 143 days in filing the appeal. A number of notices/communications through ITBA portal were sent to the assessee viz dated 15.01.2021, 24.02.2021, 28.12.2022, 30.12.2022, 11.01.2023 and 09.03.2023, however, the assessee did not respond to the notices. Accordingly, the ld. CIT(A)

dismissed the appeal of the assessee in limine, against which the assessee has come in appeal before this Tribunal.

5. Before us, the Id. Counsel for the assessee has submitted that the assessee had submitted application for condonation of delay in filing the appeal dated 10.11.2017 before the Id. CIT(A) , Palampur, which was received in the office of the CIT(A) Palampur on 20.11.2017, but the same was not entertained while dismissing the appeal. The contents of the application are reproduced hereunder :

To
The Commissioner of Income tax
(Appeals)
PALAMPUR
HIMACHAL PRADESH

Sir,

Sub: Application for condonation of delay in filing appeal-Reg.
Ref: Appeal filed on 19-03-2016 against order u/s 143(3) dtd
28-03-2016 for the assessment year 2013-14

With reference to the above cited matter I submit the following facts for your kind consideration.

2. I have filed the above appeal on 10-03-2016 whereas the same was due on 17-5-2016. The delay is on account of my illness. I was hospitalized and was in deep depression. During the period as I was suffering from hypertension. I had lost my business and my resort was sealed by the SBI Bank and it remained sealed for almost 10 months. My doctors advised me bed rest. I was totally bed ridden. Hence I could not attend to my business and tax affairs during the said period. I am herewith submitting a certificate from my doctor. As soon as I recovered from my illness I have lost no time in filing the appeal.

3. I am herewith submitting an affidavit also narrating all the facts.

I, therefore, in the light of the above mentioned facts submit that the delay is due to the circumstances beyond my control. Accordingly request you to condone the delay and entertain my appeal.

Thanking you,

Yours faithfully,
For Sangam resorts Pvt Ltd

Director,
Date: 10-11-17

डायरी नं.:
20 NOV 2017
आयकर आयुक्त (अपील्स)
पालमपुर (हि.प्र.)

6. We have heard the rival submissions and perused the material available on record. The notices were issued on the e-portal to the assessee but the assessee states that he did not receive any notice of hearing. Further, there is nothing on record to prove that the assessee has been served notice of hearing to furnish the relevant information/documents etc. Moreover, the assessee has filed copy of the communication made to the Id. CIT(A) for condonation of delay, which was not entertained while dismissing the appeal in limine. In these facts, we hereby condone the delay incurred in filing of the appeal before the CIT(A) and in the interest of justice, we deem it fit to restore the matter to Id. CIT(A) to decide the matter afresh in accordance with law after giving reasonable opportunity of being heard to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A).

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

Order pronounced in the Open Court on 30th January, 2024.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER

Sd/-

(A.D.JAIN)
VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाइल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar