

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3403/Mum./2023

(Assessment Year : 2018-19)

Sayaji Foods Pvt. Ltd.

R-701, & R-701 Part, TTC Industrial Area

MIDC, Rebale, Navi Mumbai 400 701

PAN – AAFCB9987P

..... Appellant

v/s

Addl./Jt./Dy./Asstt./CIT/ITO

National Faceless Assessment Centre, Delhi

..... Respondent

Assessee by : Shri Rahul Hakani

Revenue by : Smt. Manoj Kumar Singh

Date of Hearing – 15/02/2024

Date of Order – 20/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 09/06/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), Delhi, [*"learned CIT(A)"*], for the assessment year 2018-19.

2. The present appeal is delayed by 49 days. Along with the present appeal, the assessee filed an application seeking condonation of the aforesaid delay which is duly supported by the affidavit of the Director of the assessee. In the said application, it has been submitted that the copy of the impugned order was received by the assessee on 09/06/2023 and therefore the appeal was required to be filed on or before 08/08/2023. However, the appeal was filed on 26/09/2023. As per the assessee, it is Director, Mr. Azhar Yusuf Dhanani, who was looking after the income tax-related matters was not in the

country from 27/07/2023 to 16/08/2023 for personal reasons and only after his return he appointed the Chartered Accountants for preparation and filing of the appeal before the Tribunal. The assessee submitted that in view of the aforesaid circumstances, the present appeal could not be filed within the limitation period and requested for condonation of delay in filing the present appeal.

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the application, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

4. In its appeal, the assessee has raised the following grounds:-

"The Ld. CIT (Appeals) erred in law and on facts in dismissing the appeal.

2. The Ld. CIT (Appeals) erred in law and is not justified in not giving proper opportunity.

3. The Ld. CIT (Appeals) erred in law and is not justified in confirming the disallowance of Assets written off of Rs.2,45,65,867/- on Expenses on accounts purchase of assets which are irrecoverable without considering the fact that Ld. AO has made the disallowance without considering the submission of appellant dated 29th September, 2021 made during the assessment proceedings.

4. The Ld. CIT (Appeals) erred in law and is not justified in confirming the disallowance of Assets written off of Rs.2,45,65,867/- without considering the fact that Expenses of Rs. 2,45,65,867/- is not the Fixed assets written off but expenses for assets which were rendered useless due to the failure of the project and no probable future benefits were expected.

5. The Ld. CIT(Appeal) erred in law and is not justified in confirming the disallowance of assets written off of Rs. 2,45,65,867/- with appreciating the fact that assessee has opened 8-10 restaurants (outlets) at various places during the year under consideration and all the restaurants were taken on rent having guaranteed Lock-in period of 24-36 months. Average monthly rent was Rs. 10-12 Lakhs. Before taking possession of above outlets from owners, all the necessary alternation, modification & painting work was done by the company, out of their pockets assuming that the lease period will be fully availed & further extension of lease term will be sought. However, the response for the same was lukewarm and the company realised that the project is going to fail. Therefore, on mutual negotiation with land lord, assessee company left all the Plant & Machinery, Cutlery items, fixed furniture etc, whose realisable value is negligible, at the Outlets to terminate the lease agreement before lock in period without any further rental.

6. Without prejudice to above grounds of appeal, The Ld. CIT(Appeals) erred in law and is not justified in confirming the disallowance of Assets Written off of Rs. 2,45,65,867/- without appreciating the fact that when Said Expenses of Rs. 2,45,65,867/- has been considered as Capital loss then same may be considered as Addition to fixed assets first and then depreciation u/s. 32 of Income Tax Act, 1961 may be allowed as business expenses as same has not been added in block of assets while filing the return of the Income.

7. The appellant prays that:

a. Disallowance of Rs. 2,45,65,867/- on Expenses on accounts purchase of assets which are irrecoverable.

b. The Appellant plead before Honorable ITAT to add, alter or amend any or all grounds of appeal before or at the time of hearing.

8. Each of above grounds of appeal is in alternative and without prejudice to other. The appellant craves leave to add, alter, amend or delete all or any of the grounds of appeal before or during the course of hearing."

5. The brief facts of the case are that the assessee is engaged in the business of manufacturing sweets, farsan, and chats ingredients and marketing the products through chain of shops in India. For the year under consideration, the assessee filed its return of income on 30/10/2018 declaring a loss of Rs. 15,41,36,693. The return filed by the assessee was selected for complete scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, from the audited accounts, it was observed that the assessee has debited Rs. 9,02,17,171 under the head "other expenses" in the profit and loss account. Further, it was observed that under the breakup for "other expenses" the asset written-off is reflected at Rs. 2,45,65,867.

Accordingly, the assessee was asked to furnish detailed note on assets written off and how the same is allowable as a revenue item. In the absence of any reply from the assessee and in the absence of such substantiating evidence, the Assessing Officer ("AO") vide order dated 30/09/2021 passed under section 143(3) read with section 144B of the Act disallowed the aforesaid amount of Rs. 2,45,65,867 claimed as assets written off in the profit and loss account.

6. In the appeal before the learned CIT(A), despite notices being issued, no reply/submission was filed on behalf of the assessee. Accordingly, vide impugned ex-parte order dated 09/06/2023, the learned CIT(A) dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. It is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee is duly represented by the learned Authorised Representative ("*learned AR*") and wishes to pursue the litigation against the addition made by the AO. During the hearing, the learned AR submitted that the hearing notices were sent by the learned CIT(A) on the email ID of the consultant, who is a senior citizen and inadvertently did not check his email. In view of the above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. During the hearing, the learned AR undertook that the hearing notice issued on the email ID as mentioned in Form No.36, i.e. shrikant@transfurt.com, shall be complied with by the assessee. Accordingly, the learned CIT(A) is directed to issue the hearing notice(s) on the aforesaid email ID, unless at a subsequent stage, the

assessee wishes to change its email Id for the purpose of communication of hearing notice, for which the assessee is directed to intimate the learned CIT(A) in advance. Thus, the assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 20/02/2024

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 20/02/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai