

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**Before Shri R.K. Panda, Vice-President**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

आ.अपी.सं / **ITA No. 444/Hyd/2023**  
(निर्धारण वर्ष/Assessment Year: 2018-19)

M/s. Raghu Ram Renewable Energy Ltd, Hyderabad PAN:AACCR0908F	Vs.	Income Tax Officer Ward 3(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P. Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Shri N. Raj Kumar, DR	
सुनवाई की तारीख/Date of hearing:	20/02/2024	
घोषणा की तारीख/Pronouncement:	22/02/2024	

**ORDER**

**Per R.K. Panda, Vice-President**

This appeal filed by the assessee is directed against the order dated 5.7.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2018-19.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of the learned CIT (A) NFAC in not condoning the delay of 549 days in filing of the appeal and thereby confirming the addition of Rs.2,54,32,624/-

made by the Assessing Officer on account of disallowance of interest u/s 36(1)(iii) at Rs.14,16,045/- and disallowance of claim of impairment/loss with respect to valuation of closing stock of raw material at Rs.2,14,579/-.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business activities of generation of electricity from biomass energy from its power plant located at Paramkudi Taluk of Ramnad Distt in Tamil Nadu. As per the details on record, it had commissioned 18MW biomass-based power generation plant in October, 2004. Till March 2009, it had been selling the power generated to Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO) through Power Trading Corporation directly to TANGEDCO and industrial consumers within the State of Tamil Nadu. The assessee has stopped the power generation in its said plant since May, 2015, due to non-feasibility and shutdown of plant. As per record, the company is running into business loss continuously since A.Y 2012-13. It filed its return of income on 20.10.2018 declaring loss of Rs. 2,94,55,367/- which has been carried forward as per schedule CFL of the ITR. The case of the assessee was selected for complete scrutiny on the following issues:

- i) Investments/Advances/Loans
- ii) Business Loss

4. Statutory notices u/s 143(2) and 142(1) were issued and served on the assessee in response to which the AR of the assessee filed the requisite details from time to time.

5. During the course of assesment proceedings, the Assessing Officer observed that the assessee has debited an amount of Rs.1,12,15,128/- towards interest expenses on secured loans. He, noted from the financials that the assessee has advanced significant interest free unsecured loans to its group entities. On being questioned by the Assessing Officer, it was explained that the impugned interest was paid to bank against its borrowing through its cash credit bank account held with UCO Bank. Rejecting the various explanations given by the assessee and following the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Abhishek Industries Ltd (2006) 286 ITR 1 (P&H) and various other decisions, the Assessing Officer made addition of Rs.14,16,045/- u/s 36(1)(iii) of the I.T. Act.

5.1 Similarly, the Assessing Officer on perusal of the P&L Account observed that the assessee had shown less inventory of closing stock as on 31.3.2018 as compared to its opening value by an amount of Rs.2,40,16,579/-. The Assessing Officer observed that the assessee has debited an amount of Rs.2,40,16,579/- in its P&L Account and shown in the ITR other expenses as impairment of raw material. On being questioned by the Assessing Officer, the assessee explained the reasons for diminution in the value by stating as under:

*“... at the time of purchase, it would contain moisture around 14-25% and if we store the same for longer duration naturally it would lose calorific value and fair value of biomass will reduce year on year. Also, that storage of biomass will be done in open yards only and due to efflux of time biomass and coal will lose its quality and efficiency to fire. Hence, normally these types of industries will impair certain % of value of raw material every year for valuation”.*

6. The Assessing Officer noted that as per the details with bifurcation of raw material of biomass and coal it has computed such wastage/loss @ 14% due to efflux of time. However, the Assessing Officer rejected the above explanation given by the assessee and made addition of Rs.2,40,16,579/- by observing as under:

7.10 Accordingly, in view of the aforesaid discussion, claim of impairment loss of Rs.2,40,16,579/- on account of inventory of raw material was proposed for disallowance and adding back to the returned loss on account of accounting the same incorrectly as found to be against the provisions of section 145(2) as per the method prescribed vide ICDS-II duly notified by the CBDT and applicable since A.Y. 2017-18.

7.11 Before, finalizing the above proposed addition the assessee was issued a show cause notice (SCN) apprising of the proposed disallowance of claim of impairment loss in respect of closing stock valuation of raw materials on the basis of above findings, giving opportunity to submit its explanation. In reply to the said SCN the assessee has communicated its disagreement to the proposed modification. The gist of its explanation is as follows: -

1. *The fact of occurrence of normal loss due to moisture, decrease in calorific value leading to reduction in market value has been reiterated.*
2. *Have cited practical difficulty in measurement and physical stock taking due to nature of stock stating it to be cumbersome and expensive.*
3. *Since stock taking and valuation need to be done on year end and auditors could not take stock taking on 31/3/2018 and even stock taking is done after balance sheet date and for these type of material back working process for arriving stocks at the year end will not work, to protect themselves the auditors have given qualified opinion w.r.t raw material stock valuation..*

7.12 The above explanation submitted by the assessee has been carefully perused. On perusal it is found that it has failed to refute the specific reasons cited for disallowing the impairment loss claimed as communicated through the SCN. It has utterly failed to justify its adoption of unique valuation method as against the method prescribed as per section 145(2) of the Act read with ICDS –II notification issued by the CBDT which is effective from A.Y. 2017-18. Accordingly, the said proposed addition of Rs.2,40,16,579/- on account of impairment / loss in the closing stock arising out of its valuation method which is found inconsistent with the prescribed method as is made final. **(Addition of Rs.2, 40, 16,579/-)**

7. The assessee filed appeal before the learned CIT (A) NFAC with a delay of 549 days. The learned CIT (A) NFAC dismissed the appeal filed by the assessee on account of delay of 549 days on the ground that there are no reasonable and sufficient causes advanced for the delay. He, therefore, treated the appeal as invalid being not filed within the stipulated time as per the statute. Since he dismissed the appeal on account of delay, the learned CIT (A) NFAC did not adjudicate the grounds on merit.

8. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

9. The learned Counsel for the assessee submitted that the assessment order was passed on 7.4.2021 and the appeal was supposed to be filed before the learned CIT (A) NFAC on or before 7.5.2021. However, the order passed by the Assessing Officer, which was served on the assessee, was not brought to the notice of the management due to the prevailing COVID 19 situation for which the appeal was filed on 7.11.2022 with the delay of 549 days as against the due date of 7.5.2021. Referring to the decision of the Hon'ble Supreme Court in the Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020 he submitted that the delay till 28.02.2022 has to be condoned due to the pandemic. So far as the remaining period is concerned the learned Counsel for the assessee submitted that

due to the post covid effect of the Director and the Accountant who are concerned with taxation matters, the appeal could not be filed within time. Referring to the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katiji & others reported in 1987 AIR 1353, he submitted that the Hon'ble Apex Court in the said decision has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It has further been held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merit after hearing the parties. He accordingly submitted that the delay in filing of the appeal before the learned CIT (A) NFAC should be condoned and the matter should be restored to the file of the learned CIT (A) NFAC for adjudication of the appeal on merit.

10. The learned DR, on the other hand, referring to the detailed reasons given by the learned CIT (A) NFAC submitted that the assessee has not given any valid reason for delay in filing of the appeal. Under the circumstances, the order of the learned CIT (A) NFAC should be upheld and the ground raised by the assessee should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case filed the appeal before the learned CIT (A) NFAC on 7.11.2022 as against the due date of filing of the appeal on 7.5.2021 thereby causing a delay of 549 days. Since the assessee according to the learned CIT (A) NFAC could not explain any reasonable and sufficient cause for filing of the appeal with a delay of 549 days, he dismissed the appeal on account of delay and did not adjudicate the appeal on merit. It is the submission of the learned Counsel for the assessee that the delay up to 28.02.2022 has to be condoned in view of the decision of the Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in SMW(C) No.3 of 2020. So far as the balance delay of 252 days is concerned, it is his contention that the same was due to the illness of the Director as well as the Accountant who are looking after the taxation matters, on account of post covid complications and illness. Although the above submission was also given before the learned CIT (A) NFAC however, he held the same to be not reasonable and sufficient cause for the delay. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katiji & others (Supra) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because

of a non-deliberate delay. It has further been held that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merit after hearing the parties. Respectfully following the above decision, we direct the learned CIT (A) NFAC to condone the delay in filing of this appeal and decide the appeal on merit. Needless to say, the learned CIT (A) NFAC shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Open Court on 22<sup>nd</sup> February, 2024

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>VICE-PRESIDENT</b>
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Hyderabad, dated 22<sup>nd</sup> February, 2024

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Raghu Ram Renewable Energy Ltd C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad Telangana 500082
2	Income Tax Officer Ward-3(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*