

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.1524/Chny/2023  
निर्धारण वर्ष/Assessment Years: 2011-12

Presidency Kid Leather Private Limited, Vs. The Deputy Commissioner of  
21, 1<sup>st</sup> Floor, 1<sup>st</sup> Street, Spartan Nagar, Income Tax,  
Mogappair East, Chennai 600 037. Corporate Circle 5(2),  
Chennai.

**[PAN:AAACP1952D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. S. Vidhya, F.C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT  
सुनवाई की तारीख/ Date of hearing : 22.02.2024  
घोषणा की तारीख /Date of Pronouncement : 22.02.2024

**आदेश / O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.11.2023 relevant to the assessment year 2011-12.

2. Brief facts of the case are that the assessee is in the business of manufacturing and exporting of finished leather, leather shoe uppers and shoes. It filed its return of income for the assessment year 2011-12 on

29.03.2012 admitting total income of ₹.46,24,963/-. The case was selected for complete scrutiny under CASS. After considering the details furnished by the Assessing Officer against statutory notices, the assessment was completed under section 143(3) of the Income Tax Act, 1961 ["Act" in short] dated 31.03.2014 determining total income at ₹.76,24,932/-. In the scrutiny assessment order, the Assessing Officer disallowed the claim of the assessee for deduction on preliminary/pre-operative expenditure written off of ₹. 6,99,22,700/- as the assessee has claimed the same in the revised computation of total income instead of filing of revised return. On appeal, the Id. CIT(A) confirmed the addition made by the Assessing Officer. On further appeal, the ITAT, vide order in ITA No. 1836/Mds/2016 dated 23.09.2016 remitted the issue to the file of the Assessing Officer for fresh consideration.

3. In the second round of litigation, the Assessing Officer show caused the assessee and in response to the show cause notice, the assessee has filed the details as called for. After considering the submissions of the assessee, the Assessing Officer has concluded the assessment under section 143(3) r.w.s. 254 of the Act dated 27.01.2017 by disallowing the deduction claimed by the assessee holding that the assessee has

admitted that the said expenditure was enduring in nature and the same cannot be allowed being capital in nature.

4. Aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) with a delay of 1026 days in filing the appeal before the Id. CIT(A). After considering the submissions of the assessee against delay condonation, the Id. CIT(A) rejected the submissions of the assessee rejected the appeal *in limine*.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. counsel for the assessee has submitted that against the assessment order under section 143(3) r.w.s. 254 of the Act, the assessee pursued alternate remedy in the form of rectification under section 154 of the Act. Thus, the Id. counsel prayed for condonation of delay in filing the appeal before the Id. CIT(A) and to admit the claim of deduction of ₹.6,99,22,700/- being the preliminary/pre-operative expense written off. The Id. counsel filed copy of the petition under section 154 of the Act filed before the Assessing Officer which was received by the Office of the DCIT on 08.02.2017.

6. On the other hand, the Id. DR strongly supported the order passed by the Id. CIT(A).

7. We have heard both the sides, perused the materials available on record and gone through the appellate order passed by the Id. CIT(A). We have also perused the rectification petition filed before the Assessing Officer by the assessee under section 154 of the Act. It is an admitted fact that against the assessment order under section 143(3) r.w.s. 254 of the Act, the assessee has moved a petition under section 154 of the Act dated 08.02.2017 before the Assessing Officer. This fact was mentioned in its petition for condonation of delay in filing the appeal before the Id. CIT(A). However, the Id. CIT(A) has observed that “how can the assessee hope to extend the limitation period by just filing an application under section 154 of the Income Tax Act” and rejected the petition for condonation of delay filed by the assessee. The Id. DR could not able to give convincing reply to question raised by the Bench the legal sanctity of filing a petition under section 154 of the Act before the Assessing Officer. Moreover, on perusal of the appellate the Id. CIT(A) has not bothered about the rectification petition filed by the assessee under section 154 of the Act.

8. Section 154(8) of the Act lays down that the time limit for passing an order of rectification if application for amendment made by the assessee under section 154 of the Act within a period of six months from

the end of the month in which the application is received by it either to accept the claim made by the assessee or to reject the claim. Though, in para 3 at page 3, the Id. CIT(A) has narrated the facts with regard to filing of rectification petition, he did not bother about the outcome of the petition filed under section 154 of the Act. Under the above facts and circumstances, we are of the opinion that the delay in filing the appeal before the Id. CIT(A) is liable to be condoned.

9. However, the Id. DR has contended that the present appeal sought to be initiated after an inordinate delay of 1026 days beyond the prescribed time limit as per sub-section (2) of section 249 of the Act and instead of extending the limitation period, the assessee should have filed its appeal before the Id. CIT(A) within the due date of filing of appeal. The Id. DR has further submitted that if the Bench wishes to condone the delay in filing the appeal before the Id. CIT(A), suitable cost has to be imposed. Considering the submissions of the Id. DR as well as prayer of the Id. counsel, we condone the delay in filing the appeal before the Id. CIT(A) and direct the Id. CIT(A) to adjudicate the issue on merits by affording reasonable opportunities of being heard to the assessee subject to the condition that the assessee shall pay ₹.5,000/- to the State Legal Aid Authority, Hon'ble Madras High Court and produce necessary proof of

payment of cost before the Id. CIT(A) within 30 days from the date of this order.

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

Order pronounced in the open Court on 22<sup>nd</sup> February, 2024 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 22.02.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.