

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा० मीठा लाल मीना, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & Dr. MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 479/JP/2023
निर्धारण वर्ष / Assessment Year : 2016-17

Rajasthan Medical Services Corporation Ltd., Swasthya Bhawan, Tilak Marg, Jaipur-302 004	बनाम Vs.	ACIT Circle-6 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCR 2824 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None

राजस्व की ओर से / Revenue by: Shri Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/02/2024

उदघोषणा की तारीख / Date of Pronouncement: 20 /02/2024

आदेश / ORDER

PER: SHRI SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. CIT(A) dated 12-07-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following ground of appeal.

“1. The Id.CIT(A) has grossly erred in confirming the order of the AO in considering a sum of Rs.5,38,64,598.76 being amount of liquidated damages as income of the appellant and discarding the explanation of the appellant that as per policy and orders of the State Govt. same has been characterized as grant from the Govt.

2. That the order of the Id. CIT(A) is bad in law and deserves to be quashed.”

2.1 At the outset of the hearing, none attended on behalf of the assessee when the case was called out for hearing. Hence, the Bench decided to dispose off the appeal of the assessee ex-parte based on the material available on record.

2.2 At the outset of the hearing, the Bench noted that there is delay of 318 days in filing the appeal by the assessee for which the assessee filed an application for condonation of delay praying therein as under to condone the delay:-

1. The representing CA of the assessee who had filed the appeal before CIT(A) of the case was changed and the new CA who was appointed was not aware of the pending cases or orders of the assesses and assessee company itself was not aware of the orders received from the Income Tax Department during the tenure of change of CA's of their company.

2. Further the Executive Director of the Company was also transferred during the time in which appeal was to be filed So due to change of the Chartered Accountant as well as the Executive Director there was lack of awareness of the legal proceedings in below line of executives and hence, the appeal could not be filed within the due time.

Under these circumstances, the assessee was prevented by sufficient cause to file the appeal within 60 days of the service of order sought to be appealed against, it is requested that the delay in filing of the appeal may kindly be condoned keeping in view that the appellant is a wholly Govt. Company. It is further submitted that the power of condonation is expected to be exercised liberally so as to advance the cause of justice.”

2.3 On the other hand, the ld. DR objected to such delay made by the assessee in filing the appeal.

2.4 We have heard ld. DR and perused the adjournment application of the assessee and feel that there is a merit in the submission of the assessee and in view of the application of the assessee, the delay in filing the appeal by the assessee is condoned.

3.1 Apropos solitary ground of the assessee, it is noted that the ld.CIT(A) has dismissed the appeal of the assessee by holding as under:-

6.2 In the grounds of appeal, the appellant contested that the AO erred in considering a sum of Rs.5,38,64,598.76 being amount of liquidated damages as income of the appellant and discarding the explanation that as per policy and orders of the state government same has been characterized as grant from the government.

6.3 In the written submission the appellant stated that (i) Appellant is charging liquidation damages from the suppliers for delay in supply the medicines (ii) In the previous year 11-12 i.e. the first year of its existence the appellant showed this liquated damages as Income in the profit and loss account (iii) Government on 12.06.2013 issued order vide order no. F/02(08)/5/2013 instructing that Liquidated damages must not be considered as part of Income but it should be considered as part of grant and reduced from the net grant (iv) Such practice was clearly in accordance with the decision of the government.

6.4.1 In [2010] 192 Taxman 300 (SC) Commissioner of Income-tax vs Saurashtra Cement Ltd Hon'ble Supreme Court of India held Supplier defaulted and failed to supply plant and

machinery on scheduled time, and, therefore, as per terms of contract, assessee received certain amount from supplier by way of liquidated damages. Assessing Officer held said amount to be revenue receipt and included same in total income of assessee. Amount received by assessee was towards compensation for sterilization of profit-earning source and not in ordinary course of its business and, therefore, it was a capital receipt in its hands.

6.4.2 In [1998] 233 ITR 335 (MAD) EID Parry Ltd vs Commissioner of Income-tax. Hon'ble High Court of Madras held Compensation which related to delay in procurement of capital asset should be treated as capital receipt and balance amount relating to erection and construction of works and performance of all other duties should be treated as revenue receipt assessable in hands of assessee..

6.4.3 In [1959] 35 ITR 148 (SC) Commissioner of Income-tax vs Rai Bahadur Jairam Valji, Hon'ble Supreme Court of India held Once it is found that a contract was entered into in the ordinary course of business, any compensation received for its termination would be a revenue receipt, irrespective of whether its performance was to consist of a single act or a series of acts spread over a period.

6.5 In the present case, assessee stated that liquidation damages were received from the suppliers for delay in supply the medicines which is in the ordinary course of assessee's business. Hence, respectfully following the above stated decisions of the Hon'ble Supreme Court and High Court of Madras, treating the liquidated damages of Rs.5,38,64,598.76 as revenue receipt and adding the same to the total income of the assessee is upheld.

7. In result, this appeal of the assessee is dismissed.”

3.2 During the course of hearing, the ld. DR supported the order of the ld. CIT(A).

3.3 After hearing the ld.DR and perusing the materials available on record, the Bench noted that the AO treated the liquidated damages of Rs.5,38,64,598.76 as revenue receipt and added the same to the total income of the assessee which has been confirmed by the ld.CIT(A) by observing as under:-

“6.5 In the present case, assessee stated that liquidation damages were received from the suppliers for delay in supply the medicines which is in the ordinary course of assessee's business. Hence, respectfully following the above stated decisions of the Hon'ble Supreme Court and High Court of Madras, treating the liquidated damages of Rs.5,38,64,598.76 as revenue receipt and adding the same to the total income of the assessee is upheld.”

It is noted that none appeared on behalf of the assessee nor any written submission countering the order of the ld.CIT(A) was filed by the assessee . Hence, the Bench has no other alternative except to confirm the order of the ld. CIT(A). Thus the appeal of the assessee is dismissed.

4.0 In the result, the appeal of the assessee is dismissed

Order pronounced in the open court on 20 /02/2024.

Sd/-

(डा० मीठा लाल मीना)
(Dr. Mitha Lal Meena)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20 /02/2024

*Mishra

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

1. The Appellant- Rajasthan Medical Services Corporation Ltd. Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-6, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 479/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar