

आयकर अपीलिय 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 Nos.82 & 86/Hyd/2024**
(निर्धारण वर्ष / Assessment Years: 2013-14 & 2016-17)

Candid Industries Hyderabad PAN:AAACE4493Q (Appellant)	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad (Respondent)
निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, CA		
राजस्व द्वारा/Revenue by: Smt. Sheetal Sarin, DR		
सुनवाई की तारीख/Date of hearing: 19/03/2024		
घोषणा की तारीख/Pronouncement: 20/03/2024		

आदेश/ORDER

Per Laliet Kumar, J.M

These three appeals filed by the assessee are directed against the separate orders dated 15/09/2023 of the learned CIT (A)-NFAC, Delhi relating to A.Ys. 2013-14 & 2016-17 respectively. Since common issues are involved in these two appeals, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. At the outset it is seen that in all these appeals, there is a delay of 77 days in filing of these appeals for which the assessee has filed a condonation petition along with affidavit

explaining the reasons for such delay. After considering the contents of the condonation petitions and after hearing the learned DR, the delay of 77 days in filing of these appeals is condoned and the appeals are admitted for adjudication.

ITA No.82/Hyd/2024- A.Y 2013-14 & ITA 86/Hyd/2024 – A.Y 2016-17

2. The assessee has raised the following grounds:

1	The Ld. CIT(A) erred in dismissing the appeal vide his order u/s 250 of the Act on 15-09-2023 against the Penalty order u/s 271(1)(c) of the Act passed on 28-09-2022 by the AO for the AY 2013-14 which is prejudicial to the interest of the Appellant to the extent both on facts and in law.
2	The delay in filing of the appeal before the Hon'ble ITAT is due to technical defect in the E-filing portal due to which the order could not be downloaded and it could only be downloaded on 01.01.2024, which is reasonable cause for delay in filing appeal before the Hon'ble ITAT.
3	The Ld. CIT(A) ought to have appreciated the fact that the delay in filing of appeal before the Ld. CIT(A) was due to the ill health of the accountant and the same was filed soon after the said Accountant recovered, and after tracing out the said penalty order u/s 271(1)(c) and thus the delay in filing the appeal was with reasonable cause and therefore the condonation of delay of 171 days ought to have been granted u/s 249(3) of the act.
4	The Ld. CIT(A) ought to have considered that the ACIT, Circle-1(1), Hyderabad ought to have considered that he has no jurisdiction over the appellant to pass penalty order u/s 271(1)(c) of the Act as the file was received from the AO, NFAC, Delhi without following the procedure in obtaining the prior approval of the CBDT vide Circular No. F. No. 225/97/2021/ITA-II dated 06-09-2021.
5	The Ld. CIT(A) ought to have admitted and heard the appeal on the basis of merit rather than dismissing the appeal on the simple reason of delay in filing of appeal.
6	The Ld. CIT(A) ought to have appreciated that the AO erred in passing order u/s 271(1)(c) of the Act by levying penalty without establishing that the appellant has concealed the particulars of income either at the time of assessment proceedings or at the time of penalty proceedings.
7	The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in levying penalty when the addition was made on assumptions and presumptions, as held by number of judicial authorities.

8	The Ld. CIT(A) ought to have considered that the AO has not provided proper opportunity of being heard to the appellant before passing the penalty order u/s 271(1)(c) of the Act on 28-09-2022, wherein the provisions of Sec 274(1) and 275 of the Act are clearly attracted.
9	The Ld. CIT(A) ought to have considered that the ACIT, Circle-1(1), Hyderabad has failed to consider that there was no concealment of income as the cash deposits of Rs. 1,02,16,760/- in bank account were made from out of the sale proceeds received in the ordinary course of business of the assessee as well as represents the opening balances and therefore, the AO erred in initiating penalty proceedings u/s 271(1)(c) and thereby levying penalty u/s 271(1)(c), wherein there was no existence of concealment of income in the hands of the assessee.
10	The AO ought to have considered that no penalty proceedings u/s 271(1)(c) can be initiated in respect of time deposits of Rs. 60,00,000/- as the assessee has duly accounted and disclosed the time deposits in the books of accounts.
11	The AO ought to have considered that no penalty proceedings u/s 271(1)(c) can be initiated in respect of the rental income of Rs. 8,50,000/- as the assessee has maintained books of accounts and shown rental income.
12	The AO ought to have considered that no penalty proceedings u/s 271(1)(c) can be initiated in respect of the amount of Rs. 69,25,115/- being the purchase or sale of motor vehicle as the said amount was taken purely as guess work wherein there was no establishment of concealment of income for invoking the penal provisions u/s 271(1)(c) and has already been recorded in the books of the appellant.
13	Appellant may, add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

3. Facts of the case, in brief, the assessee company, is engaged in the business of Manufacture of wearing apparel. The Assessee company has not filed return of income since there is no taxable income for the A.Y under consideration. Later the case of

the assessee was re-opened for scrutiny assessment for the A.Y 2013-14 under the provisions of section 147 r.w.s 144 of the Act. Subsequently notice u/s 148 of the act were dt.30.03.2021 also notices u/s 142(1) of the Act were issued on 24.11.2021 to the assessee for which the assessee could not respond as the assessee was new to the scheme of faceless assessment and due to difficulty in arranging documents & due to technical glitches faced in submitting response assessee was unable to provide its response to notices issued by NFAC. Subsequently the A.O without having any bonafde belief that the assessee's income has escaped assessment and without providing proper opportunity of being heard and without considering facts and circumstances of the case has passed an erroneous Assessment Order u/s 147 r.w.s 144 r.w.s 144B dt. 26.03.2022 by assessing the total income of the assessee at Rs.2,39,91,880/- and by raising a demand of Rs. 2,39,75,090/- by making the addition Rs.1,02,16,760/- towards unexplained cash credit u/s 68 of the Act, Addition of Rs. 60,00,000/- towards time deposit u/s 69A of the Act, Addition of Rs. 8,50,000/- towards rent as unexplained income u/s 69A of the Act Addition of Rs. 69,25,115/- towards unexplained income of sale or purchase of vehicles u/s 69A of the Act. Aggrieved by the aforesaid order, the assessee has preferred an appeal dated 06.10.2022 and the ITAT has remanded back matter to the file of the Assessing Officer for fresh adjudication vide order dated 28.12.2023 and the A.O has passed an order u/s 271(1)(c) of the Act on 28.09.2022 by imposing a penalty of Rs.77,84,165/- . In view of the above and aggrieved by the order u/s 271(1)(c) of the Act, the assessee preferred this appeal before the Tribunal.

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

5. The learned AR drew our attention to Para 14 of the order of learned CIT (A) NFAC which is to the following effect:

9. The appellant concealed the taxable income by not filing the return of income thereby not paying due taxes to the government and consequent imposition of penalty u/s 271(1)(c). In fact, the appellant, in total disregard to law, neither filed ITR for any of the years involved in appeal i.e. A.Y. 2013-14, 2014-15, 2016-17 & 2017-18 nor made any compliance to various statutory and show cause notices during various proceedings before the AO. It is also pertinent to mention that all penalty orders were passed in September, 2022 and appellant chose to file appeals in next month i.e., October, 2022 against the four (4) quantum assessment cases for all these four assessment years but not against 12 penalty orders for all these four assessment years, which were filed so late in April, 2023. Thus, there is a contradiction emerging out from the above situation where appellant filed appeals (although delayed) against the main assessment orders but simultaneously against the penalty appeals, when appellant was in a position to file timely appeals for penalty orders atleast at the time of filing of appeals against main assessment orders for four years in October, 2022, as the penalty orders were passed only one month back in September, 2022.

10. It is also to be noted that AO made efforts and tried to elicit

response by serving notices both physically through Income Tax Inspector of the Verification Unit (VU) of the department as well as through e-mail, but all such notices were avoided during the proceedings before the AO. The appellant despite having considerable taxable income evaded the law by not filing ITRs and then again by not cooperating with the Assessing Officer in completing the proceedings.

11. As can be observed, the reasons for delay in filing appeal defy logic as, not one or two, as many as 16 appeals have been filed late. Merely submitting affidavit without substantiating the same with supporting documents, cannot justify the undue delays in filing of appeal. Even Hon'ble Supreme Court vide its order dated 10.01.2022 has reaffirmed the exclusion of period from 15.03.2020 to 28.02.2022 only for calculating the limitation prescribed under any general or specific law for all judicial / quasi-judicial proceedings, in view of Covid-19 pandemic.

12. The appellant's case does not fall under this period as the assessment itself was made subsequent to this period. Further, the appeals were not filed even in the 90 days window period from 1 March, 2022. Hence, appellant's stand of taking shield, in the name of Covid relaxation, is also not convincing.

13. In view of above and considering the facts and circumstances of the case, I am of the considered view that the appellant has failed to make out a prima facie case for condonation of delay of **171** days in filing of the appeal before the first appellate authority. The reasons given by the appellant does not come under reasonable cause as prescribed under the Act, for condonation of delay. Hence, I reject the petition filed by the appellant for condonation of delay and dismiss the appeal filed by the appellant in limine, as barred by limitation, being defective.

5. At the outset, the learned AR submitted that the Tribunal vide its order dated 28.12.2023 remanded back the

matter to the file of the Assessing Officer in the quantum appeal and therefore, the penalty which is an offshoot of the quantum proceedings are also required to be set aside to the file of the Assessing Officer.

6. The learned DR has no objection if the matter is sent back to the file of the Assessing Officer for deciding the penalty afresh along with the quantum assessment.

7. We have heard the rival arguments made by both the sides and perused the material available on record. We find the Tribunal vide order dated 28.12.2023 has remanded back the matter to the file of the Assessing Officer for the A.Y 2013-14 and 2016-17 therefore, we deem it proper to remand back this penalty appeals which are sequel to the assessment order back to the file of the Assessing Officer with a direction to decide afresh after affording due opportunity of being heard to the assessee. In the light of the above, appeal of the assessee is allowed for statistical purposes.

9. In the result, appeal filed by the assessee for the A.Ys 2013-14 and 2016-17 are allowed for statistical purposes.

Order pronounced in the Open Court on 20th March, 2024.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 20th March, 2024
Vinodan/SPS

Copy to:

S.No	Addresses
1	Candid Industries Ltd C/o P Murali Mohan & Co. CAs, 6-3-655/2/3, Somajiguda, Hyderabad 500082
2	Dy. CIT, Circle 1(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order

1.	Draft dictated on	19 th March, 2024	
2.	Draft placed before author	19 th March, 2024	
3	Draft proposed & placed before the second Member	20 th March, 2024	
4	Draft discussed/approved by second Member	20 th March, 2024	
5	Approved Draft comes to the Sr.P.S./PS	20 th March, 2024	
6.	Kept for pronouncement on	20 th March, 2024	
7.	File sent to the Bench Clerk	20 th March, 2024	
8	Date on which file goes to the Head Clerk	March, 2024	
9	Date of Dispatch of order		