

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

Before Shri Laliet Kumar, Judicial Member
(Through virtual mode)

AND

Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA Nos.83/Hyd/2024**
(निर्धारण वर्ष / Assessment Years: 2014-15)

Candid Industries Limited Plot no.1, Survey no.308, Venkateswara Co- operative, Industrial Estate, Jeedimetla, Hyderabad PAN:AAACE4493Q	Vs.	Dy. C. I. T. Circle 1(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri MV Joshi, CA appeared for Shri P. Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Ms. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	15/04/2024	
घोषणा की तारीख/Pronouncement:	29/04/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M

This appeal is filed by Candid Industries Limited (“the assessee”), feeling aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), dated 15/09/2023 for the A.Y. 2014-15.

2. At the outset it is seen that, there is a delay of 77 days in filing of this appeal 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 petition and after hearing the learned DR, the delay of 77 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The grounds raised by the assessee reads as under :

S. No	Grounds of Appeal
1	The Ld. CIT(A) erred in not considering that the Assessment order passed under section 147 r.w.s 144 r.w.s 144B of the Income Tax Act, 1961 by the Ld. AO on 28.03.2022 is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.
2	The Ld. CIT(A) erred in rejecting the petition filed by the appellant for condonation of delay of 163 days in filing the appeal before him without considering the reasons for delay, as were submitted through an affidavit dt. 23-09-2022.
3	The Ld. CIT(A) erred in rejecting the petition filed by the appellant in filing the appeal before him without considering that the Accountant has fell ill and due to that reason the said Accountant has not brought to the notice of the Management about the passing of assessment order u/s 147 r.w.s 144 r.w.s 144B of the IT Act, 1961 on 28-03-2022.
4	The Ld. CIT(A) erred in rejecting the petition filed by the appellant in filing the appeal before him without considering that the period of delay was covered under COVID-19 and Post COVID-19 period.
5	The Ld. CIT(A) erred in rejecting the petition filed by the appellant in filing the appeal before him, the Hon'ble ITAT is requested to condone the delay of 163 days i.e., period from 27-04-2022 to 06-10-2022.
6	The delay in filing of the appeal before the Hon'ble ITAT is due to technical defect in the E-filing portal due to the order could not be downloaded and it could only be downloaded on 01.01.2024, which is a reasonable cause for delay of 163 days in filing appeal before the Hon'ble ITAT.

7	The Ld. CIT(A) ought to have appreciated the fact that the Ld. AO erred in reopening the assessment beyond time period as per the Act, which is barred by limitation under the provision of Sec 149 of the IT Act, as the Ld. AO has no jurisdiction to reopen the assessment u/s 147 by issuing notice u/s 148 of the Act after the limitation of time, that too without assigning specific reasons in the notice u/s 148 of the Act; without having a bonafide belief that the assessee's income has escaped assessment and that, therefore, the reopening of assessment is incorrect, beyond law and unjustified.
8	The Ld. A.O. ought to have obtained the prior approval of the competent authority before issuing notice u/s 148 as laid down under the provisions of Sec 151 of the IT Act, 1961.
9	The Ld. CIT(A) ought to have considered that the Jurisdictional AO viz, the DCIT, Circle-1(1), Hyderabad has no Jurisdiction to issue notice u/s 148 of the IT Act, 1961 as per the provisions of Sec 151A of the IT Act, 1961 w.e.f. 01-11-2020 as per the insertion of Taxation and other Laws(Relaxation and Amendment of certain provisions)Act, 2020, which thus the notice issued u/s 148 on 30-03-2021 is invalid and is without Jurisdiction, which view is supported by the Jurisdictional High Court in the case of Sri A.V. Krishna Koundinya vs ITO, Ward-1, Hyderabad vide WP No's 25903 of 2022 and WP No's 15383 of 2023.
10	The Ld. CIT(A) ought to have considered that the notice issued u/s 148 on 30-03-2021 by the AO is invalid and is without Jurisdiction as " <i>the information flagged in the case of the assessee in accordance with risk management strategy i.e., Action information Monitoring System (AIMS)</i> " is not available in Section 148 of the Act prior to amendment by the Finance Act, 2021 w.e.f 01-04-2021.
11	The Ld. CIT(A) erred in not considering that the Ld. A.O. ought to have appreciated the position of law on the issue that when notice issued u/s 148 is invalid, the consequential assessment order passed based on the invalid notice itself, is not valid and is liable to be quashed.

12	The Ld. CIT(A) ought to have appreciated the fact that the Ld. AO erred in making the addition of Rs. 77,57,360/- to the income of the assessee towards unexplained cash credit u/s 68 of the Act, without considering the fact that the deposits were made out of sale proceeds and earlier withdrawals, and taxing the same u/s 115BBE of the Act is incorrect and unjustified.
13	The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in making an addition of Rs. 77,57,360/- towards the alleged unexplained money without appreciating the fact that the transactions are made through banking channels and are genuine business transactions, and thus the same transaction cannot be treated as unaccounted cash available with assessee, entailing itself to be made addition u/s 69A of the Act.
14	The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in making addition of Rs. 51,00,000/- towards rent as unexplained income u/s 69A of the Act, whereas the assessee company has considered the same into its accounts and as such proposing addition of Rs. 51,00,000/- to the income of the assessee company is incorrect and unjustified.
15	The Ld. CIT(A) ought to have appreciated that the Ld. AO erred in making addition on the sale or purchase of the vehicles of Rs. 23,34,404/- as unexplained investment u/s 69A of the Act, without having any bonafide belief which is incorrect and unjustified.
16	The Ld. CIT(A) ought to have admitted and heard the appeal on the basis of merit and without dismissing the appeal considering that the delay in filing the appeal was beyond the control of the appellant and with a reasonable cause.
17	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.

4. Brief facts of the case are that the assessee is a company, engaged in the business of Manufacture of wearing apparel, never filed any return of income for A.Y. 2014-15. The case of the assessee was re-opened u/s 147 of the Income Tax

Act, 1961 ("the Act"). Subsequently notice u/s 148 and u/s 142(1) of the act were issued to the assessee, but the assessee failed to respond to the said notices. The assessment was completed by the learned Assessing Officer, National Faceless Assessment Centre, Delhi ("learned assessing officer") u/s 147 r.w.s.144 of the Act on 28/03/2022 making an addition of Rs.1,51,51,000/-.

5. Feeling aggrieved by the order passed by the learned assessing officer, assessee filed appeal before the Ld. CIT(A) with a delay of 163 days. The learned CIT(A) did not condone the delay and dismissed the appeal of assessee in limini.

6. Feeling aggrieved with the order of learned CIT(A), the assessee is now in appeal before us.

7. The learned Counsel for the assessee referring to the petition for condonation of delay before the ld. CIT(A) submitted that the assessment order was passed u/s 147 r.w.s. 144 of the I.T. Act on 28.3.2022. The appeal was supposed to be filed with the ld. CIT(A) within 30 days of the receipt of the order i.e. on or before 26.4.2022. He submitted that the appeals could not be filed before the ld. CIT(A) in time due to covid and post covid effect and ill health of the Director as well as the Accountant who were looking after the income tax matters. He submitted that the appeal was filed immediately after the Accountant recovered with a delay of 163 days. He submitted that an affidavit was also filed before the ld. CIT(A) to this effect but unfortunately, the ld. CIT(A) without considering the contents of the affidavit dismissed the appeal as defective on account of delay in filing of the appeal and

thereby sustaining the various additions. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case. He submitted that since the assessment order has also been passed u/s 144 of the Act which is during the covid period and the ld. CIT(A) has dismissed the appeal in limini, therefore, the matter should be restored to the file of the learned Assessing Officer for fresh adjudication.

8. The learned DR, on the other hand, heavily opposed the arguments advanced by the learned Counsel for the assessee. She submitted that neither the assessee filed any return u/s 139(1) of the Act nor filed any return in response to notice u/s 148 of the Act. The assessee also filed an appeal before the ld. CIT(A) with a delay of 163 days without any reasonable cause. Under these circumstances when the assessee has no regard for the statutory notices, the order passed by the ld. CIT(A) dismissing the appeal in limini is justified.

9. We have considered the rival arguments made by both sides, perused the orders of the learned Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We find that the assessment was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued to the assessee on 30.3.2021, during the prevailing Covid period. We find in response to notice u/s 148 and u/s 142(1) of the Act, the assessee neither filed any return nor replied to the statutory notices for which the Assessing Officer was constrained to pass the order u/s 144 of the Act determining the total income of the

assessee at Rs.1,51,91,760/-. Since the assessee filed the appeal before the learned CIT(A) with a delay of 163 days, the learned CIT(A) dismissed the appeal in limini without condoning the delay. It is the submission of the learned Counsel for the assessee that the notice u/s 148 the Act was issued during the Covid period which was at its peak and during that period the assessee could not file the return in response to notice u/s 148 of the Act. It is also his submission that the delay in filing the appeal before the learned CIT(A) is not deliberate but due to the ill health of the Director as well as the Accountant due to covid for which an affidavit was also filed before the learned CIT(A). It is the submission of the learned Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate with evidence to the satisfaction of the learned Assessing Officer regarding the various issues that have been raised by him.

10. Similar issues were raised by the assessee before this Tribunal in assessee's own case vide ITA nos. 553/HYD/2023, 555/HYD/2023 and 556/HYD/2023 and the Tribunal restored the issues back to the file of the Assessing Officer for adjudicating the issues afresh after affording reasonable opportunity of being heard to the assessee. Following similar reasonings given by the ITAT in the above said cases and considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the learned Assessing Officer with a direction to grant an opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per facts and law. The assessee is also hereby directed to appear before the Assessing Officer

without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. The assessee is also directed for payment of costs of Rs.3,000/- (Rupees Three Thousands only) in favour of Prime Minister National Relief Fund which shall be payable within one month from the date of receipt of this order. Grounds of appeal are answered accordingly.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 29th April, 2024

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated 29th April, 2024

Vinodan/SPS

Copy to:

S.No	Addresses
1	Candid Industries Ltd C/o P Murali & 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