

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

Before Shri Mahavir Singh, Vice-President
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No. 520/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Ramisha Supply Chain Solutions (P) Ltd Hyderabad PAN:AADCR0598N	Vs.	Income Tax Officer Ward 3(2) Hyderabad
(Appellant)		(Respondent)
निर्धारित द्वारा/Assessee by:	Shri P Murali Mohan, CA	
राजस्व द्वारा/Revenue by:	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	14/05/2024	
घोषणा की तारीख/Pronouncement:	14/05/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 22.09.2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. Facts of the case, in brief, are that the assessee company is in the business of rendering services to the Airtel, filed its return of income for the A.Y 2013-14 on 27.05.2014

declaring total income of Rs.5,92,130/-. The case was selected for scrutiny and during the course of assesment proceedings, the Assessing Officer noticed that there is a difference in gross receipts as per financial statements of the assessee when compared to Form 26AS, therefore, after considering the relevant explanations furnished by the assessee made addition of Rs.65,78,329/-. The Assessing Officer also made addition of Rs.18,71,781/- towards sundry creditors u/s 68 of the I.T. Act, 1961 on the ground that the assessee could not furnish necessary evidences to prove identity, genuineness and creditworthiness of the creditors. The Assessing Officer further made addition of Rs.2,47,34,841/- u/s 40(a)(ia) of the Act for failure to deduct TDS u/s 194C in respect of various expenses including labour and security charges, postage, courier, transportation etc.,

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A) NFAC and such appeal has been filed on 18.8.2016 with a delay of 131 days. The assessee has filed petition along with reasons for delay in filing of the appeal and argued that the assessment order passed by the Assessing Officer was served personally by the Assessing Officer to one of the Executive by name Shri P. Sukumar and the person who has received the assessment order was not aware of the process that is to be followed i.e. the appeal should be filed within 30 days from the date of receipt of the order. Further, only when the Counsel who appeared before the Assessing Officer inquired

as to what happened to the assessment order, it came to light that the order was passed and served on the executive. The Counsel Shri Harjeet Singh, CA perused the order and took steps to file the appeal which caused delay of 131 days. The delay in filing of the appeal was neither willful nor for wanton of any undue benefit, therefore, pleaded before the first appellate authority to condone the delay in filing of the appeal. The assessee had also challenged the various additions made by the Assessing Officer in the assessment order.

4. The learned CIT (A) NFAC after considering the submissions of the assessee dismissed the appeal filed by the assessee unadmitted for delay in filing of the appeal by holding that the reasons given by the appellant for filing the appeal within the time allowed under the Act does not come under reasonable cause. The learned CIT (A) NFAC had also discussed various additions made by the Assessing Officer towards the difference in gross receipts as per Form 26AS and books of account of the assessee, addition towards unproved sundry creditors and disallowance of various expenses u/s 40(a)(ia) of the Act for failure to deduct TDS u/s 194C of the Act and after considering the relevant details, rejected the arguments of the assessee and sustained the addition made by the Assessing Officer.

5. Aggrieved by the order of the learned CIT (A) NFAC, the assessee is in appeal before us.

6. The learned Counsel for the assessee although argued on various legal grounds raised in their memorandum of appeal, but restricted his arguments on the issue of dismissal of appeal by the learned CIT (A) NFAC without condoning the delay in filing the appeal. The learned Counsel for the assessee submitted that when the learned CIT (A) NFAC has dismissed the appeal filed by the assessee without condoning the delay, then he should not have gone to discuss the issues on merit and decided the issues against the assessee. Therefore, he submitted that the delay in filing of the appeal before the learned CIT (A) NFAC should be condoned and the matter may be set aside to the file of the Assessing Officer for fresh adjudication of the issues.

7. The learned DR, Shri Shakeer Ahmed, on the other hand, fairly agreed that once the learned CIT (A) NFAC has dismissed the appeal filed by the assessee for delay in filing of the appeal, then he ought not to have discussed the issues on merit. However, he fairly agreed that the matter may be set aside to the file of the learned CIT (A) NFAC to give reasonable opportunity of being heard to the assessee and decide the issue afresh.

8. We have heard both the parties, perused the material available on record and gone through the orders of the lower authorities. The learned CIT (A) NFAC dismissed the appeal filed by the assessee on limitation without condoning the delay in filing of the appeal. The learned CIT (A) NFAC had also discussed the

issues involved in the appeal on merit and decided the issues against the assessee. It is a well settled principles of law that once the appeal is not admitted for whatever reasons, then the question of deciding any issues involved in the said appeal does not arise. Since the learned CIT (A) NFAC has not admitted the appeal filed by the assessee for not filing the appeal within the time allowed under the Act, in our considered opinion, the learned CIT (A) NFAC ought not to have discussed the issues on merits.

9. Be that as it may, the facts remains that whether is there any reasonable cause for the assessee in not filing the appeal on before the due date prescribed under the Act. Admittedly, the assessee has filed the appeal and there is a delay of 131 days in filing of the appeal before the first appellate authority. The assessee has explained the reasons for delay in filing of the appeal. As per the petition filed by the assessee before the first appellate authority, the appeal could not be filed within the prescribed time under the Act due to mistake of one Executive by name Shri P Sukumar who has received the assessment order from the Assessing Officer but not taken any steps to file the appeal because of ignorance of law. Further, the learned Counsel who appeared before the Assessing Officer has inquired about the assessment order passed by the Assessing Officer and only after he came to know that the assessment order has already been served on the Executive of the company, has taken steps to file the appeal which caused delay of 131 days in filing of the appeal.

We find that the reasons given by the assessee for not filing the appeal seems to be bonafide and reasonable and comes under reasonable cause as provided under the Act, because no person derive any benefit by not filing the appeal before the authorities. Therefore, considering the reasons given by the assessee before the learned CIT (A) NFAC, in our considered opinion, the learned CIT (A) NFAC ought to have condoned the delay in filing of the appeal and admitted the appeal filed by the assessee for adjudication. Thus, we condone the delay of 131 days in filing of the appeal before the first appellate authority.

10. Having condoned the delay of the appeal filed by the assessee before the learned CIT (A) NFAC, we have gone through the various additions made by the Assessing Officer towards difference towards gross receipts as per books of account and Form 26AS, additions towards unproved creditors and disallowance of various expenses u/s 40(a)(ia) of the Act. It was the argument of the assessee that the assessee could not file the necessary details before the Assessing Officer to justify its case and plead for one more opportunity before the Assessing Officer to explain the case of the assessee. The learned DR has not raised any serious objection for setting aside the issue to the file of the Assessing Officer. Therefore, considering the nature of the additions made by the Assessing Officer and also to give one more opportunity of hearing to the assessee before the Assessing Officer, we deem it proper to set aside the issue to the file of the

Assessing Officer. Thus, we set aside the order of the learned CIT (A) NFAC and restore the issue back to the file of the Assessing Officer and direct the Assessing Officer to reconsider the assessment denovo in accordance with law after providing reasonable opportunity of being heard to the assessee.

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

Order pronounced in the Open Court on 14th May, 2024.

Sd/- (MAHAVIR SINGH) VICE PRESIDENT	Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 14th May, 2024

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 3(2) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order