

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

ITA No.297/Mum/2024 (AY 2018-19)

Mahavir Polyfilms Pvt. Ltd. F-10, 7 th Floor, Everest Bldg. Pandit Madan Mohan Malviya Road, Tardeo, Tulsiwadi Mumbai 400003	vs.	Income Tax Officer-7(2)(1) Aayakar Bhavan M.K. Road Mumbai 400020
PAN/GIR No. : AAGCM1704N		
Appellant	..	Respondent

Appellant by :	Shri Mukesh Soni
Respondent by :	Shri Sunil Shinde, Sr. A.R.

Date of Hearing	15.05.2024
Date of Pronouncement	16.05.2024

आदेश / O R D E R

PER OM PRAKASH KANT, AM:

This appeal by the assessee is directed against order dated 20.12.2023, passed by the Id. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi (in short ‘the Id. CIT(A)) for AY 2018-19, raising following grounds:

- “1 Under the facts and the circumstances of the case and in law, the Impugned Order passed u/s 250 of the Act is perverse, arbitrary and bad in law and without jurisdiction.
- 2 Under the facts and the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeal),

(hereinafter referred to as "Ld. CIT (A)") has erred in dismissing the appeal at threshold on the ground of delay in filing appeal.

- 3 *Under the facts and circumstances of the case and in law, Ld. CIT (A) erred in passing order u/s 250 of the Act without giving any opportunity of being heard and against the hearing notice 04.12.2023 for which due date was given on 19.12.2023.*
- 4 *Under the facts and circumstances of the case and in law, Ld. CIT (A) has erred in not giving the benefit of Suo Motu Writ Petition (C) no. 3 of 2020 by Hon'ble Apex and completely violating the said guidelines/mandate of Hon'ble Court.*
- 5 *Under the facts and circumstances of the case and in law. Ld. CIT (A) has erred in upholding impugned additions of”*
 - a. *Rs. 3,28,78,700/- being 2 percentage of Material Consumed expenses as alleged in unexplained expenditure.*
 - b. *Rs. 4,68,841/- under section 37 of the Act which were already added in total income by the Appellant.”*

2. At the outset the ld. Counsel for the assessee submitted that this appeal has been dismissed *in-limni* by the ld. CIT(A) rejecting the application of the assessee for condoning the delay of 134 days in filing the appeal. He submitted that the assessment order was passed by the Assessing Officer (AO) on 17.04.2021 and the appeal before the ld. CIT(A) was filed on 29.09.2021. The ld. Counsel submitted that the delay was during the period of 'Covid pandemic'. He referred to the order of the Hon'ble Supreme Court dated 27th April 2021 wherein Hon'ble Supreme Court extended the limitation in filing of suits/petitions/applications/appeals/all other quasi judicial proceedings during 'Covid' period. This order has been further modified vide order dated 10/01/2022 and the period from 15/03/2020 to 28/02/2022 has been excluded for the purpose of computation of limitation as prescribed under any general or specific laws in respect of all judicial or quasi

judicial proceedings. He further referred to the Circular No. 10/2021 issued by the Central Board of Direct Taxes (CBDT) on 25th May 2021, where in the CBDT directed that for the purpose of counting the limitation period for filing appeals before the CIT(A) appeals shall extend as ordered by the Hon'ble Supreme Court. The Ld Counsel submitted that the appeal filed by the assessee being within the limitation period, the finding of the ld. CIT(A) should be set aside and the matter should be restored back to him for deciding it on merits.

3. We have heard the rival submissions of the parties and perused the material on record. We find that the ld. CIT(A) has dismissed the appeal *in-limini* observing as under:

"In this case, there is delay of filing of appeal of 134 days, the date of order being 17/04/2021 and appeal filing date being 29/09/2021, In this regard, the appellant's explanation is that

"On behalf of under the (not exceeding 500 words) instructions from our above client, we have to address Your Honor as under

The Assessment Order in case of our above client for the Assessment Year 2018-19 was passed on 17th April, 2021 and was possibly emailed to Your Appellant on the very same date.

The Appeal work has been entrusted to us. Mr. CA Pradeep Joshi, who is involved in the drafting of the Appeal is 66 Years of Age and has been suffering from diabetes. Unfortunately, he has been suffering from dry eyes due to his diabetes & was unable to operate Computers for a weeks time.

We have request, Your Honor to condone the delay considering the fact that the delay in filing Appeal was due to the circumstances beyond the Control of Your Appellant as well as his Authorized as his Authorized"

In view of the appellant's explanation, it is seen that only a week's delay has been explained. No explanation has been given for the remaining period. Therefore, the delay of 134 days [approx 4.5 months] is not condoned and the appeal of the appellant is not admitted. Dismissed in-limine."

4. The Hon'ble Supreme Court in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition © No. 3 of 2020 has extended the period of limitation for filing the appeals during this period observing as under:

“5. Taking into consideration the arguments advanced by learned counsel and the Impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, **it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.***
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect. from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
- IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act. 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

5. Further, the CBDT vide circular No. 10/2021 dated 25th May 2021 clarified as under:

Circular No. 10.2021

*F.NO.225/40/2021/ATA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated 25 May, 2021

Subject: Clarification regarding the limitation time for filing of appeals before the CIT(Appeals) under the income-tax Act, 1961(the Act)

1. The Central Board of Direct Taxes has issued Circular No. 8 of 2021 on 30 April 2021 providing various relaxations till 31 May 2021 including extending time for filing the appeals before CIT(Appeals). At the same time, the Hon'ble Supreme Court vide order dated 27 April 2021 in Suo Motu Writ Petition (Civil) No.3 of 2020 restored the order dated 23 March, 2020 and in continuation of the order dated 8 March, 2021 directed that the period(s) of limitation, as prescribed under any General or Special Laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders

2. The Central Board of Direct Taxes, clarifies that if different relaxations, are available to the taxpayers for a particular compliance, the taxpayer is entitled to the relaxation. which is more beneficial to him. Thus, for the purpose of counting the period(s) of limitation for filing of appeals before the CIT(Appeals) under the Act, the taxpayer is entitled to a relaxation which is more beneficial to him and hence the said limitation stands extended till further orders as ordered by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No.3 of 2020 vide order dated 27 April 2021.

Sd/-

(Prajna Paramita)

Director to the Government of India.

6. Admittedly, the delay of 134 days in filing this appeal from 17/04/21 to 29/09/2021 falls within the period for which Hon'ble

Supreme Court has extended the limitation, therefore, the appeal is undisputedly within the limitation period and therefore, we set aside the order of the ld. CIT(A) and restore the matter back to him for deciding the admissibility of appeal in accordance with law and then decide the issue in dispute on merit and pass a reasoned order. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. Ground No. 1 of the appeal of the assessee is accordingly allowed.

7. Since we have already restored the appeal to the file of the ld. CIT(A), the other grounds raised are rendered academic. Therefore, we are not adjudicating the same.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.05.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

Sd/-
(OM PRAKASH KANT)
Accountant Member

Place: Mumbai
Date: 16.05.2024
n.p

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ **ITAT, Bench, Mumbai.**