

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

Before Shri Manjunatha, G. Accountant Member and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.355/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2013-14)

Invest Smart India (P) Ltd Hyderabad PAN:AACCI4258D (Appellant)	Vs.	Income Tax Officer Ward 2(1) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri P. Murali Mohan Rao, CA		
राजस्व द्वारा / Revenue by: Shri Shakeer Ahmed, DR		
सुनवाई की तारीख / Date of hearing: 06/06/2024		
घोषणा की तारीख / Pronouncement: 06/06/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the assessee is directed against the order dated 08/02/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. Facts of the case, in brief, are that the assessee has not filed return of income for the A.Y 2013-14 as per section 139 of the I.T. Act, 1961 nor submitted its reasons for non-filing. The case of the assessee is a partnership firm and has not filed its

return of income for the A.Y 2017-18. Accordingly, notice u/s 148 of the I.T. Act, 1961 dated 31.03.2021 was issued and served upon the assessee through e-filing portal. Notice u/s 142(1) of the Act dated 30.06.2021, 29.11.2021 and 22.12.2021 was issued to the assessee seeking details/documents. As per information available with the Assessing Officer, the assessee has sold shares of M/s. Gemstone Investment Ltd for Rs.3,95,72,450/- and the assessee has not declared the Long-Term Capital Gain. Further, during the assesment proceedings the assessee has not offered any explanation in this regard. However, no compliance was made by the assessee. Hence the Assessing Officer completed the assessment as per best judgment u/s 144 of the I.T. Act, 1961 thus made demand of Rs.3,95,72,450/-.

3. Feeling aggrieved, the assessee preferred an appeal before the learned CIT (A) NFAC who dismissed the appeal on the ground that the assessee chosen to file the appeal after a delay of 184 days. Since the assessee has not demonstrated that there was a sufficient cause that prevented the assessee from exercising its legal remedy of filing appeal within the prescribed period of 30 days, the learned CIT (A) NFAC dismissed the appeal filed by the assessee.

4. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in dismissing the appeal filed by the assessee un-admitted even though the assessee has filed an

petition for condonation of delay with valid reasons. The learned Counsel for the assessee submitted that the assessee has filed a petition for condonation of delay and explained the reasons for such delay which is due to pandemic, the order passed by the Assessing Officer was not noticed by the assessee which resulted in delay in filing of the appeal. However, immediately after noticing the order passed by the learned CIT (A), steps has been taken to file the appeal which resulted in delay, but the delay in filing of the appeal is neither intentional nor for wanton of any undue benefit. Therefore, the delay in filing appeal before the learned CIT (A) may be condoned and the matter may be set aside to the learned CIT (A) to decide the issue on merits.

5. The learned DR, on the other hand, supporting the orders of the Revenue authorities, submitted that the Assessing Officer and the learned CIT (A) NFAC had given sufficient opportunities to the assessee to file the requisite details. However, the assessee for the reasons best known to it did not comply with the statutory notices issued by the Department. Hence, the appeal filed by the assessee should be dismissed and the orders of the learned CIT (A) NFAC should be upheld.

6. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee has filed appeal before the first appellate authority with a delay of 184 days and said delay is covered partly

by covid and partly after covid period. The covid period is covered by the order passed by the Hon'ble Supreme Court in suo motto writ petition No.21/22 wherein the Hon'ble Supreme Court has extended limitation applicable for various proceedings before the Courts/Tribunals from time to time and upto May, 2022.

7. In so far as the delay not covered by Covid period, the assessee claims that due to aftermath of Covid effect, it could not attend the day-to-day business activities including income tax proceedings and because of this, it could not notice the appellate order passed by the learned CIT (A) NFAC. But immediately after noticing the order passed by the learned CIT (A) NFAC, the appeal has been filed with a small delay. In our considered view, the reasons given by the assessee for not filing the appeal in time appears to be reasonable and bonafide and also comes under reasonable cause. Thus, we condone the delay in filing of the appeal before the first appellate authority.

8. Having said so, let us come back to the issue. Admittedly, the assessment before the Assessing Officer was ex-parte, because the assessee neither appeared nor filed any details before the Assessing Officer. Since the assessee could not file any evidence before the Assessing Officer, the Assessing Officer has passed ex-parte best judgment order. In our opinion, to give one more opportunity to the assessee, the matter needs to go back to the file of the Assessing Officer instead of the learned CIT (A).

Thus, we set aside the order passed by the learned CIT (A) and restored the issue back to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue denovo in accordance with law after providing reasonable opportunity of being heard to the assessee. Since the assessee has not complied with the statutory notices issued by the Revenue Authorities, the assessee is hereby directed to deposit an amount of Rs.5000/- with the Telangana State Legal Aid Services Authority, Department of the Hon'ble Telangana High Court and submit the necessary payment slip to the Registry within 1 month from the date of this order. We hold and direct accordingly.

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

Order pronounced in the Open Court on 6th June, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 6th June, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Invest Smart India (P) Ltd C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Income Tax Officer Ward 2(1) Hyderabad
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order