

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>ITA No. 719/Bang/2024</b>
<b>Assessment Year : 2018-19</b>

<p>M/s. NICE Interactive Solutions India Pvt. Ltd., 8<sup>th</sup> Floor, A &amp; B Wing of Block Rhine Pune Embassy Projects Pvt. Ltd., Rajiv Gandhi Infotech Park Phase II, Hinjewadi, Pune – 411 507. <b>PAN: AACCN4932D</b></p>	<b>Vs.</b>	<p>The Deputy Commissioner of Income Tax, Circle – 3(1)(1), Bangalore.</p>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Aliasgar Rampurwala, CA & Shri Manju L Prasad, Advocate
Revenue by	:	Ms. Shamala .D.D, Addl. CIT-DR

Date of Hearing	:	21-05-2024
Date of Pronouncement	:	12-06-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by the assessee against order dated 23/02/2024 passed by NFAC, Delhi for A.Y. 2018-19.

**2. Brief facts of the case are as under:**

**2.1** The assessee company is engaged in business of software publishing, consultancy and supply software, operating system software, business and other application software. It has filed its Return of Income for the year under consideration on 30-11-2018 with returned income of Rs. 8,76,33,860/-. Thereafter, the return was processed u/s 143(1) of the Act by the CPC determining the total income at Rs. 8,76,81,540/-. Subsequently, the case was selected for complete scrutiny.

**2.2** Notice u/s 143(2) of the Act was issued on 23.09.2019. Subsequently, notices u/s 142(1) of the Act along with questionnaire dated 14-12-2020 and 02-03-2021 were issued and duly served on the assessee. The assessee furnished the written submissions. The information/documents filed by the assessee have been examined.

**2.3** The assessee has two units, one is SEZ unit and other is Non-SEZ unit. The assessee has claimed deduction under Section 10AA from the SEZ unit. However on perusal of the financials, it was found that the assessee has shifted more profit to the SEZ unit by claiming lower amount of expenses as deduction, with respect to certain expenses. Both the units are for exports.

**2.4** The Ld.AO found that the assessee is claiming certain expenses only in the non-SEZ unit and claiming more 10AA deduction. Audit fees and bank charges are expenses which have to be incurred for both the units.

**2.5** Similarly, travel and conveyance expenditure was majorly claimed by the assessee in non-SEZ unit even though the 79.36% of the turnover is from the SEZ unit. Both are export oriented units and therefore the employees will have to travel for different purposes. Therefore the travel expense should atleast be in proportion to the turnover. Hence the same is reallocated based on the turnover ratio.

**2.6** The Ld.AO accordingly issued draft assessment order containing disallowance of the deduction of Rs. 3,15,00,294/- claimed u/s 10AA of the Act for the year under consideration vide show cause notice dated 24-03-2021. In response to the said show cause notice dated 24-03-2021, the assessee has submitted reply on 30-03-2021. After considering the submissions of the assessee, the Ld.AO reduced the claim of assessee u/s. 10AA by Rs. 3,15,00,294/-.

**2.7** Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A). The appeal was filed with a delay of 118 days. The Ld.CIT(A) dismissed the appeal without deciding the issues on merits and without condoning delay in filing the appeal.

**2.8** Aggrieved by the order of Ld.CIT(A), assessee filed appeal before this *Tribunal*.

**3.** The Ld.AR at the outset submitted that the Ld.CIT(A) dismissed the appeal *in limine* as there was a delay of 118 days in filing the appeal before the first appellate authority.

**3.1** He placed reliance on the decision of *Hon'ble Supreme Court* wherein the limitation period stood extended till May, 2022. It is submitted that the Ld.AO passed the assessment order on 21.04.2021 being the start of COVID pandemic in the country. And appeal was filed on 17.08.2021. He submitted that the limitation stood extended by virtue of the order of *Hon'ble Supreme Court*, which was not considered by Ld.CIT(A).

**3.2** In support, he also placed reliance on the decision of *Hon'ble Supreme Court* in the case of Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471(SC).

**3.3** On the contrary, the Ld.DR though vehemently opposed, however could not establish any malafide intention of assessee.

**3.4** We have perused the submissions advanced by both sides in the light of records placed before us.

**3.5** We note that the period of limitation to file appeal expired during COVID period. The present assessee's case is squarely covered by the protection extended by *Hon'ble Supreme Court (supra)*. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. We have to prefer substantial justice rather than technicality in deciding the issue. As observed by *Hon'ble*

*Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.(supra)*, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the *Tribunal* is capable of removing injustice and to do justice.

**Respectfully following the above view, delay if any in filing appeal before Ld.CIT(A) stands condoned.**

4. It is noted that Ld.CIT(A) has not decided the issues on merits. The Ld.CIT(A) is therefore directed to pass a detailed order on merits after considering the submissions / evidences filed by assessee.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the appeal filed by the assessee is remanded to the Ld.CIT(A).

**In the result, the appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in open court on 12<sup>th</sup> June, 2024.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> June, 2024.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore