IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA Nos.540 & 541/KOL/2023
Assessment Year: 2015-16

Maa Chintpoorni Tie–Up Private Limited 3, Bipin Behari Ganguly Street, Lalbazar, West Bengal-700012. (PAN: AAHCM4217B)	Vs	Income Tax Officer, Ward-1(2), Kolkata
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri Himadri Mukhopadhyay, Advocate & Shri Kumarjit Das, Advocate
Respondent by : Shri Sailen Samadder, Addl. CIT, Sr. DR

Date of Hearing : 06.06.2024
Date of Pronouncement : 21.06.2024

O R D E R

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are against the separate orders of Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)" passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2015-16 dated 04.05.2023 vide order Nos. ITBA/NFAC/ S/250/2023-24/1052590782 (1) and ITBA/NFAC/ S/250/2023-24/1052589873 (1) passed against the assessment order u/s. 143(3) and penalty order u/s. 271(1)(c) of the Act both dated 15.09.2017 and 30.03.2018 respectively.

2. The assessee has raised the following grounds of appeal in ITA No. 540/Kol/2023:

"1. For that, the Ld. Commissioner of income Tax (Appeal) failed to consider the fact that there was an admitted delay of 15 months because of the situation which is beyond the control of your appellant.

For that, Ld. Commissioner of income Tax (Appeal) should have considered that fact that delay was conducted due the circumstances beyond the control of your appellant and applicant has explained the same in detail in the alongwith the appeal filed by your appellant. It was specifically enumerated by the assessee which was reproduced by the Ld. Appellate authority in point no.3 of the appeal order.

For that, it is a settled principle of law that when the fact of the case is convincing and denial of the fact due to delay in filing any petition is against the principle of natural justice and equity, the appeal should not be rejected on the point of delay.

For that, the appeal is an extended part of assessment. In appeal, appellate authority has the power to find out whether the claim of assessee is genuine or not in spite of assesses non-appearance from the assessment case record. But in the present case Ld. Appellate authority did not consult the assessment record which ought to have been with the appellate authority at the time of completion of appeal.

For that, Ld. Appellate authority did not call for the records or the assessing authority to find out [whether the claim of the assessee as reproduced in para 5 of the appeal is genuine or not.

For that, Ld. Commissioner of income Tax (Appeal) should have considered that the available balance sheet and valuation report of fair market value of the share has already been in the file of the assessing officer. Therefore, completion of appeal without consulting the assessment record is bad in law and should not sustained in the eye of law.

2. Ld. Appellate authority should have considered the fact that addition of Rs.81,357/- u/s 14A of the Income Tax Act is not sustainable as there is no exempted income of the appellant during the year.

3. For that, your appellant can produce all the document if an opportunity has been given to your appellant to rebut the contention of the Assessing Authority.

For that your appellant crave leave to produce further ground or grounds at the time of hearing, if necessary."

3. The assessee has raised the following grounds of appeal in ITA No. 541/Kol/2023:

" For that, Ld. Commissioner of income Tax (Appeal) should have considered the fact that at the point of time when the share was purchased the fair market value of the share has shown by the assessee/appellant is supported by the certificate of Chartered Accountant as per prescribed format under rule 11 UA of Income Tax Rule 1962.

For that, Ld. Commissioner of income Tax (Appeal) should have considered the fact that the valuation made by the assessing officer of the share of Technico

India Pvt. Ltd. has no basis and as such the penalty u/s 271(1)(C) should not be attracted.

For that, Ld. Appellate authority should have considered the fact that assuming but not admitting the fact that the assessment of fair market value of the assessing officer regarding the disputed share are true and correct, even if the penalty of u/s 271(1)(c) could not have been attracted because fair market value of the disputed share has been decided by the assessee was on the basis of the report of the Chartered Accounted dated 18.04.2014, therefore, there is no wilful suppression on the part of the assessee.

For that, your appellant crave leave to produce further ground or grounds at the time of hearing, if necessary."

4. We shall take up the appeal in ITA No. 540/Kol/2023 first. Brief facts of the case are that the assessee filed its return of income showing total income of Rs.31,143/- on 28.09.2015. The Ld. AO noted that the assessee had acquired 60,104 shares of M/s. Technico (India) Pvt. Ltd. (in short "M/s. TIPL"), a company in which public is not substantially interested @ 781/- per share at Rs.4,69,52,644/-. The assessee was required to file the Balance Sheet of M/s. TIPL for the year ended 31.03.2015 along with the valuation report prepared by a Chartered Accountant for the Fair Market Value (in short "FMV") of shares of M/s. TIPL in accordance with the Income Tax Rules, 1962 (in short "Rules"). The Balance Sheet and valuation report furnished were examined and it was observed by the Ld. AO that the Accountant's certificate furnished by the assessee was in relation to valuation of the shares as on 31.03.2013 which was not relevant for the previous year relevant to assessment year under consideration and the FMV was not in accordance with Rule 11UA of the Rules. The AO recomputed the FMV at Rs.886.86 in place of Rs.781/- adopted by the assessee and added a sum of Rs.63,62,609/- as income from other sources u/s. 56(2)(viia) of the Act and also initiated penalty proceedings u/s. 271(1)(c) of the Act.

5. The AO also observed that the assessee has average investment of Rs.8,66,93,038/- being the average of FY 2013-14 and FY 2014-15 invested in shares, income from which in the form of dividend,

irrespective of the fact whether such income had been earned during the financial year or not, was not includible in the total income of the assessee. Hence, in accordance with Rule 8D of the Rules and circular No. 5 of 2014 dated 11.02.2014 issued by the CBDT, the disallowance under Rule 8D(2)(iii) was worked out to Rs.4,33,465/-. As the assessee had debited expenses to the tune of Rs.88,857/-, which also included auditor's remuneration of Rs.7,500/- being statutory in nature, hence the disallowance u/s. 14A was restricted to Rs.81,357/- which was also added to the income of the assessee. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A). However, as there was no proper representation before the Ld. CIT(A), and neither any adjournment was sought nor even copies of accounts were filed in support of the contention raised it was inferred by the Ld. CIT(A) that the assessee did not wish to rebut the contention of the AO and the conclusion drawn and applying the principle of "*vigilantsbus ennon dormientibus jura suveniunt*", he decided the grounds of appeal against the assessee. The appeal was also delayed and while in para 3.5 the Ld. CIT(A) has held that there can be no reason to condone the delay in filing the appeal, however, in the subsequent paragraph the grounds of appeal raised by the assessee and the statement of facts filed with the appeal Memo have been examined and as no documentary evidence and explanation in support of the contentions raised were filed in response to notice issued seeking, inter alia, written submission in support of the contention raised, the grounds of appeal were decided against the assessee.

6. During the course of the appeal before us, the Ld. DR submitted that for the valuation of unquoted shares, the valuation report as on 31.03.2013 was filed as the Balance sheet for FY 2014-15 was not prepared. It is pertinent to mention that the shares were received/ allotted on 30.05.2014 and, therefore, the valuation should have been

done as per the last available Balance sheet for FY 2013-14. It is mentioned in the statement of facts filed before the Ld. CIT(A) that the audited Balance Sheet as on 31.03.2013 was the only available Balance Sheet as the Balance Sheet as on 31.03.2014 was finalised only on 25.09.2014. The assessee has relied on Rule 11U of the Rules which is relevant for sec. 56 and as per clause (b) thereof, the Balance sheet in relation to any company, means, -

> *"(i) for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming Part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 19§6), and where the balance sheet on the valuation date is not .drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on, a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;"*

7. Sub-clause (ii) of clause (b) of Rule 11U, as applicable for the year under consideration, is reproduced as under:

> *"(ii) in any other case, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed under section 224 of the Companies Act, 1956 (1 of 1956)."*

8. It was submitted in the course of the appeal by the Ld. AR that the balance sheet for the FY 2014-15 was not prepared and the return was also filed as per the Balance sheet of FY 2013-14. The AO ought to have accepted the valuation as per the last audited balance sheet relevant for FY 2013-14.

9. After carefully perusing the submissions of both the parties and the material available on record, we find that the Ld. CIT(A) has dismissed the appeal primarily on account of delay without adjudicating the issues raised. The assessee did not file any documentary evidence

before the Ld. CIT(A) while in ground no. 3 it is stated that the assessee can produce all the documents if an opportunity is given to rebut the contention of the assessing authority. We note that Section 250(6) casts a duty upon the Ld. CIT(A) to pass an order in appeal which should state the points for determination, decision thereon as well as the reason for arriving at such decision. In the present case before us, even though the assessee has made its submissions along with supporting documents before the Ld. AO which are on record, the same escaped attention of the Ld. CIT(A) while disposing of the appeal. Hence, in order to be fair to both the assessee and the AO, the order of the Ld. CIT(A) is set aside to be made afresh. The assessee shall file evidence regarding availability or non-availability of the balance sheet as per sub-clauses (i) and (ii) of clause (b) to Rule 11U of the I. T. Rules, 1962 and the Ld. CIT(A) shall decide the appeal on both the grounds, i.e. relating to FMV of shares for the purpose of section 56(2)(viia) and also recompute the disallowance u/s. 14A in accordance with law. Accordingly, we remit the matter back to the file of Ld. CIT(A) for disposal of the grounds taken by the assessee by passing a speaking order. Needless to say, that assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal. Accordingly, all the grounds taken by the assessee are allowed for statistical purposes.

10. As regards ITA No. 541/Kol/2023 penalty u/s. 271(1)(c), since the penalty is dependent upon the assessment order and even the appeal against the penalty has not been decided on merit, therefore, as the appeal against the quantum addition has been set aside to the Ld. CIT(A) to be decided afresh, the order dismissing the appeal against the penalty imposed by the AO is also set aside to the Ld. CIT(A) to decide in accordance with law after considering the outcome in the quantum

appeal. Hence, this appeal of the assessee is also allowed for statistical purposes.

11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2024.

Sd/-	Sd/-
(Sanjay Garg)	(Rakesh Mishra)
Judicial Member	Accountant Member

Dated: 21st June, 2024

JD, Sr. P.S.
Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A), NFAC, Delhi
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy// By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata