

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.209/Ind/2024
(Assessment Year: 2017-18)

Balaji Phosphates Limited, 305, Utsav Avenue, 12/5 Ushaganj, Indore	Vs.	DCITACIT 1(1), Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AADCB5654R		
Assessee by	Shri Subhash Jain, ARs	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	25.07.2024	
Date of Pronouncement	29.07.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 26.02.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC) Hyderabad for A.Y.2017-18.

2. The assessee has raised following grounds of appeal:

- “1. *On the facts and circumstances of the case the Addl CIT/JCIT(A) was not justified in holding that the appellant was not prevented from any sufficient cause in delay in filing of appeal even appellant filed with appeal memo to the application for condonation of delay alongwith affidavit.*
2. *On the facts and circumstances of the case the Addl Commissioner of Income Tax/JCIT (Appeals) has erred in not providing appropriate opportunity of being heard to the appellant for explaining the reason for delay in filing of appeal and dismissed the appeal which is against of law and principle of natural justice.*
3. *Without prejudice to the above, alternatively it is submitted that on facts and in the circumstances of the case, the Ld. Addl CIT/JCIT (A) is not justified in passing the order with confirming to the addition by way of disallowance of expenses without providing sufficient opportunity of being heard to the assessee and thereby violating the principle of natural justice hence the impugned order passed by the Ld. JCIT(A) is liable to be declared as illegal and bad in law on account of violation of Principle of natural Justice.*
4. *On the facts and circumstances of the case the Addl CIT/JCIT(A) was not justified in confirming to the twice disallowance of expenses Rs. 135450/- on which TDS was not made even suo moto made at the time of filing of Income Tax Return.*
5. *On the facts and circumstances of the case the appellant order passed by the Ld. AO CPC and Ld. Addl CIT/JCIT(A) are highly unjustifiable bad in law and against of principle of natural justice because the assessee was not granted any reasonable opportunity of being heard against non-considering to application of condonation of delay.*
6. *On the facts and circumstances of the case, Addl CIT/ICIT(A) and Learned AO, has erred in making adjustments in the returned Income even same are not permissible under section 143(1), of the Act because same was already made in computation of Income. Thus thereby confirming to demand of Rs.1,04,230/-, in the Intimation dated 10.01.2019 issued under section 143(1) of the ACT, is illegal and against of fact.*
7. *On the facts and circumstances of the case Addl CIT/JCIT (A) erred in confirming the action of Learned AO in making the twice disallowance of Rs. 1,35,450/-, under section 40(a) (ia) of the Act on account TDS not deducted on advertisement and office rent without appreciating that the same was suo motto already disallowed in*

computation of Income and then apply for rectification under section 154 of the Act to such apparent mistake but disposal of same was not reflected upto date of filing of first appeal due to started recovery proceeding against tax levied. Thus dismissal of appeal is illegal and bad in law.

8. *On the facts and circumstances of the company the order of Addl CIT/JCIT(A) refuse to admit the appeal on the ground that it was inordinate delay of 1769 days is unbelievably without looking to the sufficient cause as requested in condonation application filed with affidavit thus dismissal of appeal is against of law and deserve to be set aside.*
9. *The appellant denies liabilities of interest u/s 234 A, B & C.*
10. *That the appellant craves leave to add, amend, alter, delete all or to modify any of above grounds and to pursue any other or further grounds as may be required."*

3. The Ld. AR of the assessee has submitted that CIT(A) has dismissed the appeal of the assessee in *limine* due to the delay of 1769 days from the date of communication of order u/s 143(1)(a) of the Act. The Ld. AR has submitted that the assessee has explained the cause of delay in the application of condonation of delay along with the affidavit which is placed at Page No.163 to 167 of the paper book. He has pointed out that since the adjustment made by the CPC while processing the return was a double addition on account of certain expenses which were already suo-moto disallowed by the assessee u/s 40(a)(ia) of the Act due to non deduction of tax at source. Therefore, there is a double addition as a result of the addition made by the CPC while processing the return of income u/s 143(1)(a) of the Act. Ld. AR has pointed out that the assessee thereafter filed a petition u/s 154 for rectifying

the mistake however, there was no communication from the department about the disposal of said rectification application. He has referred to the screen shots of the portal of the department showing the message 'page not found' as on 6.11.2023 and submitted that when the assessee did not received any communication about the disposal of the petition u/s 154 of the Act ultimately filed an appeal before CIT(A) on 16.11.2023 against the order of intimation u/s 143(1) of the Act dated 10.01.2019. The Ld. AR has submitted that the assessee has explained the cause of delay as the assessee was awaiting the outcome of the petition filed u/s 154 of the Act however, when there was no communication received in this regard and the A.O has initiated the recovery proceedings thus, the assessee was having no objection but to file the appeal before CIT(A) which was dismissed on the ground of barred by limitation. He has referred to the computation of income at page-73 of the paper book as well as return of income and submitted that the assessee has suo-moto made the disallowance on account of interest on Income Tax , advertisement and office rent. He has referred to page 107 of the paper book and submitted that in the return of income the assessee has made a disallowance of Rs.6,84,816/- out of which a sum of Rs.1,35,450/- is suo-moto disallowance u/s 40(a)(ia) of the Act on account of advertisement expenses as well as office rent expenses. Thereafter if the appeal of the assessee is not decided on merits it would be a gross injustice to the assessee being charged to tax twice on the same income. The Ld. AR of the assessee has submitted that due to some technical

glitches on the portal of the Department the order passed u/s 154 of the Act by the CPC did not come to the knowledge of assessee and therefore, the assessee was not aware of the same which was subsequently made available after the appeal was filed before CIT(A). Ld. AR has pointed out that due to the typographical mistake the suo-moto disallowance was not shown at Sl.No.16 of the return of income however, the consolidated figure has been given at Sl.No.23 and therefore, the adjustment made by the CPC amounts to double deduction on account of non deduction of TDS on advertisement expenses and office rent.

4. On the other hand Ld. DR has vehemently opposed to the condonation of delay and submitted that there is an inordinate delay in filing the appeal before CIT(A) of 1769 days. The assessee has not explained sufficient cause for such delay and has taken excuse of filing petition u/s 154 of the Act which was already disposed off by the CPC on 14.5.2019 within the period of 3 months from the date of filing this rectification application. The assessee has not produced any material except single screen shot to prove that the said order dated 14.5.2019 was not available on the portal and was not in the knowledge of the assessee. He has submitted that one instance of technical glitch of not opening the page could not a ground for non availability of the said order for all the times through these 5 years. Ld. DR has further submitted that the CIT(A) has rightly dismissed the appeal of the assessee being barred

by limitation as the assessee could not explain the sufficient cause for such inordinate delay. It is a case of complete negligence on the part of the assessee. He has relied upon the following decisions:-

- (i) Gupta Emerald Mines (P) Ltd Vs Principal Commissioner of Income Tax 156 taxmann.com 197 (Rajasthan) High Court of Rajasthan.
- (ii) C.I. Builders (P) Ltd Vs ACIT/DCIT 159 taxmann.cm 554 (Indore-Trib.) In the ITAT Indore Bench.
- (iii) Royal Stitches (P) Ltd Vs Deputy Commissioner of Income Tax 156 taxmann.com 361 (Madras) High Court of Madras.
- (iv) Mrs P.S. Rajeswari Vs Assistant Commissioner of Income Tax, (Central) Circle-VI(2), Chennai, 56 taxmann.com 219 (Madras)
- (v) T. Kishan Vs Assistant Commissioner of Income Tax (Central) Circle-2, Hyderabad, 23 taxmann.com 383 (Hyderabad) in the ITAT Hyderabad Bench 'A'.

4.1 The Ld. DR has thus submitted that once the order was passed u/s 154 of the Act then the assessee should have filed the appeal against the order of rectification u/s 154 of the Act as the original processing u/s 143(1) of the Act merges with the order passed u/s 154 of the Act.

4.2 In rejoinder the Ld.AR has submitted that the screen shot at page No.162 shows logging in the account on 6.11.23 is only one instance of not showing the relevant page and non-availability of the impugned order. Nobody keeps these records of logging into the IT portal to see the updates of any order or notice.

5. We have considered rival submissions as well as relevant material on record. There is no dispute that the assessee filed the appeal belatedly before CIT(A) against the intimation u/s 143(1)(a) of the Act after the delay of 1769 days. The assessee explained the cause of delay in the application filed before CIT(A) which is also supported by elaborate statement made in the affidavit placed at page 164 to 166 as under:

भारतीय गैर न्यायिक
पचास
रुपये
50
FIFTY
RUPEES
Rs.50
INDIA NON JUDICIAL
मध्य प्रदेश MADHYA PRADESH
BH 11470

Filed Before Hon'ble Commissioner of Income Tax
Faceless Appeal Center-New Delhi

AFFIDAVIT

Name : Mohit Airen
Fathers Name : Late Pravin Airen
Address : 809-B10, Dil Pasand Greens Rem-4, Scheme No.
140 Indore
Age : 46 Years
Occupation : Business

I solemnly declare on oath as under,

1. That I am the director of Balaji Phosphates Limited (Earlier known as Balaji Phosphates Private Limited) since 16.09.2013 of the company.

That said company is a limited company, domiciled in India and involved in manufacturing of super phosphates fertilizers. accounts of the company are duly audited under companies act as well as under the income tax act.

Serial No. 2025
Date 16/11/2023
KISHORE S. SOANI
Advocate & Notary
INDORE (M.P.)

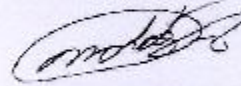
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3. That our company has filed its income tax return on 24.11.2017 after declaring net taxable income Rs. Nil and income tax paid under section 115B Rs. 1,76,66,716/- through vide Ack. No 314242381241117 from business income after discharging its tax liability from TDS as reflected in 26AS of traces as well as through Tax deposit U/s 140A. after enclosing tax audit report in form no. 3CA & 3CD but said return process u/s 143(1)(a) of the income tax with demand notice Rs. 1,04,230/- u/s 156 in respect of above appeal assessment year has been raised to appellant, due to twice disallowance to the amount on which TDS not deducted u/s 40(a)(ia) on advertisement and office rent, even suo motto disallowed by the appellant in filed computation of Income. Hence assessee filed rectification application U/s 154 of the income tax act dated 04.02.2019 but same was still pending for disposal.
 4. Thus non issuing rectification order U/s 154 against intimation u/s 143(1)(a) dated 04.02.2019 Hence I have been received recovery notice from the jurisdictional officer for immediate deposit to the demand of Rs. 1,04,230/- Hence downloaded to the intimation cum demand and prepare to appeal of disputed demand.
 5. That action of the AO of CPC has been made after ignoring to the computation of income filed by the assessee with Income tax return dated 28.11.2017 where pointed out expenses suo motto disallowed Rs. 74,250/- on account of TDS not deducted on advertisement and Rs. 61,200/- on account of TDS not deducted on office rent but Ld AO CPC has twice disallowed same expenses as already disallowance in the computation of taxable Income. Hence company filed rectification but no response received against the rectification and addition by disallowing to the expenses which was already disallowed by appellant thus leads to double disallowance which is against of the income tax act, 1961.
 6. That the delay in filing of appeal from the date of original Intimation u/s 143(1)(a) dated 10.01.2019 for 1769 number of days while there is no delay as intimation u/s 154 is still under process. Therefore the delay is unintentional and bonafied. Further there was no benefit to the assessee in delay in filing of appeal. Thus the assessee was prevented from sufficient cause. Hence be condone to the delay of 1769 number of days.

For Balaji Phosphates Limited

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7. That our consultant further advise to file appeal against to the said Intimation order u/s 143(1)(a) dated 10.01.2019 as rectification u/s 154 is still under process. Hence we are filing appeal against the intimation u/s 143(1)(a) dated 10.01.2019 of the act for baseless demand.
8. That the delay is caused due to reason narrated above which is beyond to our control. Hence condone for delay in filing the appeal against order u/s 143(1)(a) of the Income tax act is by 1769 days by virtue of having above reasonable cause.
9. That my said affidavit has been enclosed with application filed for condonation of delay in filing of Appeal.
10. That the delay in filing of appeal is unintentional and assessee was prevented from sufficient and above bonafied reason.
11. That all facts stated in the condonation of delay application are true and correct in our knowledge and belief.
12. That our above statement is true and correct and it conceal nothing.

Place: Indore
Dated: 15.11.2023



(Mohit Airen)
DEPONENT

WITNESS:



- 1) Kamlesh Kumar Bantania
103 Punit Apartment, 26-B
Phadnis Colony, Indore
- 2) DINESH BATHANKAR
84 Kanchand Street, Nagpur
Indore



SIGNED BEFORE ME
AS
COMI
BY /
(P.)

For Balaji Phosphates Limited
Authorized Signatory

5.1 We find from the record that so far as the adjustment made by the CPC u/s 143(1) of the Act it was a double addition on account of disallowance made u/s 40(a)(ia) of the Act for non deduction of tax at source on advertisement expenses and office rent because the assessee had already made suo-moto disallowance of these expenses @30% provided u/s 40(a)(ia) of the Act. This fact is manifest from the computation of the income at page No.73 of the paper book as well as in the return of income at Sl.No.23 placed at page 107 of the paper book which reads as under:

Page-73 of paper book

<u>Balaji Phosphates Pvt Ltd</u>		
Profit before tax as per Profit and Loss Account		17666716
ADD:		
Depreciation disallowed	12420517	
Interest on Income Tax	549366	
TDS not deducted on Advertisement	74250	
TDS not deducted on office rent	<u>61200</u>	<u>13110533</u>
		30772049

Page 107 Sl.No.23 of paper book

23. Any other item or items of addition Under section 28 to 44DA	684816
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5.2 It appears that the CPC has made this addition in respect of advertisement and office rent expenses due to the reason that at Sl.No.16 of the return of income the assessee has shown the disallowance u/s 40 at NIL. However, the fact remains that the

assessee had already made the suo-moto disallowance u/s 40a(ia) of the Act and therefore, the adjustment made by the CPC amounts to double addition on this account. It is also not disputed that the assessee filed the petition u/s 154 to rectify the mistake on 4.2.2019 and explained in the affidavit that the assessee was not aware of outcome of the said petition till the appeal was filed before CIT(A). Though the said rectification petition was dismissed by CPC vide order dated 14.5.2019 and therefore, the CIT(A) has dismissed appeal of the assessee as barred by limitation. Ld. DR vehemently objected to the reasons explained by the assessee for the delay in filing the appeal and pointed out that once the order u/s 154 of the Act was passed on 14.5.2019 then the reasons explained by the assessee are contrary to the record. It is pertinent to note that though there is a delay of 1769 days in filing the appeal by the assessee before Ld. CIT(A) however, the **Hon'ble Supreme Court in case of suo-moto cognizance for extension of limitation period in 441 ITR 722** extended the limitation expiry on or after 15.3.2020 to till 28.2.2022 and also granted further period of 90 days from 1.3.2022 for filing the petition/appeals etc. Therefore, more than 2 years was the period of COVID 19 pandemic which is also a relevant factor for considering the length of delay in filing the appeal in case of the assessee. This is not a case where the assessee is going to take any undue advantage by filing the appeal belatedly rather this is a case of undisputed fact on record where the disallowance made by the CPC while processing the return of income has resulted the double disallowance u/s 40(a)(ia)

of the Act as the assessee has already made suo-moto disallowance of the said amount. It is the settled proposition of law that the expression "sufficient cause" must be construed liberally in favour of the litigant approached the court belatedly so that the dispute could be decided as far as possible on merits and not on technicalities. At the same time litigant is not allowed to use the process of law to achieve an ulterior purpose in under hand way by filing the appeal belatedly. In the case in hand when the assessee has already filed the petition u/s 154 of the Act for rectification of the apparent mistake in the order of CPC processing the return u/s 143(1) of the Act shows that the assessee did not accept the said order of the CPC passed u/s 143(1) of the Act and taken up the issue with the CPC itself. Though there may be a confusion about the knowledge of the order passed u/s 154 of the Act by the CPC which has caused the inordinate delay in filing the appeal before the CIT(A). Since there was a development and exceptional circumstances of the COVID 19 in between and therefore, this is not a case of taking any undue benefit or to achieve an ulterior purpose in under hand way once the assessee already questioned the adjustment made by the CPC by filing the petition u/s 154 of the Act. If the assessee is denied the relief on technical ground it will amount to a gross injustice to the assessee as there is a double addition made by the CPC in respect of the amounts in question. The decisions relied upon by the Ld. DR are duly considered but in our view in the facts of the present case those decisions will not support the contention of Ld. DR. Accordingly in the facts and

circumstances of the case when the assessee already filed the petition u/s 154 for rectification of mistake of double addition made by the CPC the time elapsed in the said process of disposal of the said petition and there after the assessee was not having knowledge of the same is required to be taken into consideration as a reasonable cause for the delay in filing the appeal. Hence, in the interest of justice we condone the delay of 1769 days in filing the appeal before CIT(A).

6. As regards the adjustment made by the CPC we find that the assessee has already made a suo-moto disallowance u/s 40(a)(ia) of the Act of the expenditure towards advertisement and office rent @30% and therefore, the adjustment made by the CPC is clearly a case of double addition. Accordingly the disallowance/adjustment of Rs.1,35,450/- made by the CPC is deleted.

7. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 29.07.2024.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 29.07.2024

Dev/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore