

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

**BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / ITA No.366/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2020-21)

Nichino India Private Limited (Formerly Nichino Chemical India Private Limited, now merged) Hyderabad [PAN : AAECN5394B]	Vs.	DCIT / ACIT Circle-5(1) Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms.Suvibha Nolkha, AR
राजस्व द्वारा/Revenue by : Shri D.Praveen, DR

सुनवाई की तारीख/Date of Hearing: 09/09/2024
घोषणा की तारीख/Pronouncement on: 25/09/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 13/02/2024 passed by the learned Commissioner of Income Tax (Appeals) ("Learned CIT(A)"), Mumbai in the case of Nichino India Private Limited ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. Assessee filed return of income for the assessment year 2020-21 on 13/02/2021, declaring a loss of Rs.3,93,94,677/-. Intimation under section

143(1) of the Income tax Act, 1961 (“the Act”) was served on the assessee on 19/11/2021, determining the loss at Rs.2,65,54,308/-. Subsequently, the case was taken up for scrutiny and an order under section 143(3) read with section 144C(3) and 144B of the Act was passed on 09/11/2023, determining the loss at Rs.85,01,308/-.

3. Assessee preferred appeal before the learned CIT(A) against the order dated 06/12/2023 under section 143(1) of the Act with a delay, stating that considering the changes in the Income Tax portal and the assessment proceedings were already initiated, the assessee could not make an application under section 154 of the Act and there was no subsequent opportunity to the assessee to make representation before the learned Assessing Officer and in such circumstances, assessee preferred the appeal against 143(1) order with a delay.

4. Learned CIT(A) refused to condone the delay stating that the delay of 718 days is inordinate, and the reasons stated by the assessee do not constitute sufficient cause. The learned CIT(A) further held that subsequent to the passing of the order under section 143(1), if any order under section 143(3) was passed and appeal against such 143(3) order is preferred, the intimation u/s 143(1) of the Act gets merged with the order under section 143(3) of the Act and therefore, the order under section 143(1) does not survive and the appeal thereon becomes infructuous and not maintainable. Learned CIT(A) accordingly dismissed the appeal.

5. Aggrieved, assessee preferred this appeal before us, stating that it was already pleaded before the learned CIT(A) that due to changes in the income tax portal and also in view of the fact that the regular assessment proceedings were initiated, the assessee could not prefer an application under section 154 of the Act and due to the fact that the assessment proceedings were faceless, the assessee had no opportunity to put forth their case against disallowance in the intimation under section 143(1) in the

regular proceedings. Learned AR further submitted that in the order under section 143(3) there was no discussion in respect of disallowance made in the intimation under section 143(1) and therefore, the assessee did not get sufficient opportunity to ventilate their grievance on this aspect.

6. Learned AR placed reliance on the decision of the Hon'ble Apex Court in the case of Commissioner of Income Tax Vs. Gujarat Electricity Board (2003) 260 ITR 84 (SC), and on the orders of the Coordinate Bench in the case of National Stock Exchange of India Ltd Vs. DCIT in ITA No.732/Mum/2023 dated 22/09/2023 and The South India Club Vs Income Tax Officer in ITA No.354/Del/2024 dated 22/05/2024. For all these reasons, the learned AR prayed that since the appeal against the order under section 143(3) of the Act is pending, the delay in preferring the appeal against 143(1) may be condoned and it may be restored to the file of the learned CIT(A) to decide along with the appeal against 143(3) of the Act.

7. Learned DR submitted that when once the order under section 143(3) is passed after intimation under section 143(1), the later merges with the former and the learned CIT(A) rightly held so, while dismissing the appeal. On the aspect of non-discussion in the order under section 143(3) about the disallowance made under section 143(1) intimation, learned DR submitted that it would be convenient if both the appeals are heard and disposed of together by the learned CIT(A).

8. We have gone through the record in the light of the submissions made on either side. It is a fact that certain disallowances are made in the intimation under section 143(1) of the Act, under which the loss of Rs.3,93,94,677/- returned by the assessee was reduced to Rs.2,65,54,308/-. It could be seen from the order under section 143(3) of the Act that not much discussion is made on this disallowance. In the case of M/s Areca Trust Vs. Commissioner of Income Tax (Appeals), while passing

intimation under section the 143(1), the learned Assessing Officer relied on the adjustment made in 143(1). The Coordinate Bench held that when the adjustment made in 143(1) was the basis for the addition made in the 143(3) orders, the cause of action had arisen to prefer an appeal under section 143(1), but not under section 143(3) of the Act. In Commissioner of Income Tax Vs. Gujarat Electricity Board (supra), Hon'ble Apex Court held that,-

There is no dispute that Section 143(1)(A) of the Act enacts a summary procedure for quick collection of tax and quick refunds. Under the scheme if there is a serious objection to any of the orders made by the Assessing Officer determining the income, it is open to the assessee to ask for rectification under Section 154. Apart therefrom, the provisions of Section 143(1)(a)(i) indicate that the intimation sent under section 143(1)(A) shall be without prejudice to the provisions of sub-section(2). The Legislature, therefore, intended that, where the summary procedure under sub-section (1) has been adopted, there should be scope available for the Revenue, either suo motu or at the instance of the assessee to make a regular assessment under Sub-section(2) of Section 143. The converse is not available; a regular assessment proceeding having been commenced under Section 143(2), there is no need for a summary proceeding under Section 143(1)(a).

10. In these circumstances, we are of the considered opinion that merely because assessment proceedings under section 143(3) are concluded, it does not mean that the appeal under section 143(1) will automatically become infructuous. It is a question of fact. Here in the case on hand, though the disallowance made in the intimation under section 143(1), the learned Assessing Officer referred to 143(3), such aspect is not at all discussed in the order under section 143(3). He simply adopted the figures from 143(1) intimation in the order under section 143(3) of the Act. We are, therefore, of the considered opinion that the appeal against 143(1) has not become infructuous in view of the decision of the coordinate Bench in the case of M/s Areca Trust (supra).

11. Explanation offered by the assessee for delay is not considered by the learned CIT(A) in its factual perspective. According to us, the facts pleaded by the assessee for such delay, namely, considering the changes in the Income Tax portal and in view of the initiation of regular assessment proceedings, assessee could not prefer any application under section 154 of the Act and mentioning the same before the learned Assessing Officer, constitute sufficient cause to condone the delay. We accordingly condone the delay. Considering the plea advanced by the learned DR, we restore this appeal also to the file of the learned CIT(A) to be decided along with the appeal preferred against order under section 143(3) of the Act.

12. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this the 25th September, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 25/09/2024
L.Rama, SPS

Copy forwarded to:

1. M/s Nichino India Private Limited (before merger Nichino Chemical India Private Limited, now merged with Nichino India Private Limited), A-24/25, APIE Balanagar, Hyderabad
2. The DCIT / ACIT, Circle-5(1), IT Towers, Hyderabad
3. The Pr.CIT, Hyderabad
4. The DR, ITAT, Hyderabad
5. Guard File

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