

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

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

आ.अपी.सं /ITA No.657/Hyd/2024
(निर्धारण वर्ष/Assessment Year:2022-23)

M/s. Cygni Energy Private Limited, Hyderabad. PAN:AAFCC8060N	Vs.	Dy. Commissioner of Income Tax, Circle 1(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri T. Rajendra Prasad, C.A.	
राजस्व द्वारा/Revenue by:	Shri Rajan Agarwala, Sr.DR	
सुनवाई की तारीख/Date of hearing:	19/09/2024	
घोषणा की तारीख/Pronouncement:	23/09/2024	

आदेश/ORDER

PER MADHUSUDAN SAWDIA, A.M.:

This appeal is filed by M/s. Cygni Energy Private Limited (“the assessee”), feeling aggrieved by the order passed by the ADDL/JCIT(A) Udaipur (“Ld. CIT(A)”), dated 24.05.2024 for the A.Y. 2022-23.

2. At the outset, the Learned Authorised Representative (“Ld. AR”) submitted that the assessee is a company filed their return of income for A.Y. 2022-23 on 29.09.2022 declaring total income at Rs. Nil. The Ld. AR further submitted that the assessee had opted section 115BAA of the Income Tax Act, 1961 (“the Act”) for the purpose of rate of income tax to be paid on the total income. Therefore, the assessee was not eligible for certain deductions as specified u/s 115BAA of the Act including deduction u/s.35(2AB) of the Act. However, while filing the return of income in Form no. ITR-6 in Schedule ESR, the assessee disclosed an

amount of Rs.1,26,19,626/- as eligible deduction u/s.35(2AB) of the Act. But in fact the assessee had not claimed any such deduction in their return of income. The assessee got an intimation from the Centralized Processing Centre, Income Tax Department (“the CPC”) proposing an addition of Rs.1,26,19,626/- on account of the claim of such deduction u/s.35(2AB) of the Act. The assessee filed objection against such proposed addition before the CPC on 31.01.2023 through online portal. However, without consider the objection raised by the assessee the CPC passed intimation u/s.143(1) on 26.07.2023 making the addition of Rs. Rs.1,26,19,626/- on account of deduction u/s.35(2AB) of the Act. In the meanwhile the case of the assessee was selected for scrutiny and notice u/s.143(2) of the Act dated 01.06.2023 was issued to the assessee. Finally the Ld. AO passed order u/s.143(3) of the Act on 21.03.2024 making adjustment of Rs.17,08,29,780/-.

3. Aggrieved by the intimation of the CPC u/s.143(1) of the Act dated 26.07.2023 , the assessee filed appeal before the Ld. CIT(A) on 18.04.2024. Further aggrieved by the order of Ld. AO u/s.143(3) of the Act dated 21.03.2024, the assessee also filed appeal before the Ld. CIT(A) on 18.04.2024. The appeal filed before the Ld. CIT(A) against the intimation of the CPC u/s.143(1) of the Act dated 26.07.2023 was delayed by 237 days. Therefore the Ld. CIT(A) without condoning the delay of 237 days dismissed the appeal of the assessee. However the appeal of the assessee against the order of Ld. AO u/s.143(3) of the Act dated 21.03.2024 is still pending before the Ld. CIT(A).

4. Aggrieved by the order of Ld. CIT(A) against the intimation of the CPC u/s.143(1) of the Act dated 26.07.2023, the assessee is in appeal before us. The Ld. AR submitted that before the intimation u/s.143(1) order was passed, the case of the assessee was taken up for scrutiny u/s.143(2) of the Act. Hence the assessee was under impression that the adjustment made by the CPC will be considered by the Ld. AO during assessment

proceedings u/s 143(2) of the Act and therefore the assessee did not file any appeal against the intimation of the CPC u/s.143(1) of the Act dated 26.07.2023 during the pendency of assessment proceedings u/s 143(2) of the Act . However, while passing the order u/s.143(3) of the Act, the Ld. AO did not give any relief on account of the addition made by CPC u/s.143(1) of the Act. The assessee came to know about this facts only on receiving the order u/s.143(3) on 21.03.2024. As soon as the assessee came to know about this facts, the assessee filed the appeal against the intimation u/s.143(1) of the Act before the Ld. CIT(A) on 18.04.2024, which resulted in delay of 237 days in filing the appeal before the Ld. CIT(A). Therefore the Ld. AR submitted that the delay in filing the appeal before the CIT(A) was not intentional on the part of the assessee and he requested the bench to condone the delay and remand the matter back to the file of the CIT(A) to decide the issue on merits.

5. Per contra, the Ld. DR had no objection against the remanding of the matter back to the file of Ld. CIT(A). However, the Ld. DR requested the bench to remand the matter back to the file of the Ld. CIT(A) with whom the appeal against the order u/s.143(3) of the Act is pending.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. As submitted by the Ld. AR the delay in filing of the appeal before the Ld. CIT(A) was only due to the reason that the assessee was under the impression that the addition made u/s.143(1) of the Act would be considered by the Ld. AO during the proceedings u/s.143(2) of the Act. Therefore we are of the opinion that there was reasonable ground on the part of the assessee in filing the appeal before the CIT(A) with a delay of 237 days. Therefore we condone the delay in filing the appeal before the Ld. CIT(A) and remand back the matter to the file of the Ld. CIT(A) to decide the issue on merits. For the purpose of convenience, we remand back the matter to the file of the Ld.

CIT(A) with whom the appeal of the assessee against the order u/s.143(2) is pending. The Ld. CIT(A) shall provide an opportunity of being heard to the assessee before deciding the issue. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 23rd Sept., 2024.

Sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Sd/-

**(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER**

Hyderabad.

Dated: 23.09.2024.

* Reddy gp

Copy of the Order forwarded to :

1.	M/s. Cygni Energy Private Limited, Plot No.B 58 to B 60, APIE, Balanagar, Hyderabad-500037
2.	DCIT, Circle 1(1), Hyderabad.
3.	Pr.CIT, Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,