

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "A" BENCH, BANGALORE**

**Before Shri George George K., Vice President
and
Ms. Padmavathy S., Accountant Member**

ITA No. 1711/Bang/2024 (Assessment Year: 2020-21)		
ABS Fujitsu General Pvt. Ltd. No # 63/4, Basava Sadana Vishwanatha Rao Road Madhavanagar Bangalore 560001 PAN – AAFCA1594D (Appellant)	vs.	DCIT, Circle - 1(1)(1) BMTc Building Koramangala Bengaluru 560095 (Respondent)

Assessee by:	Shri Narendra Kumar Jain, Advocate
Revenue by:	Shri R.N. Siddppaji, CIT-DR

Date of hearing:	17.10.2024
Date of pronouncement:	21.10.2024

ORDER

Per: Padmavathy S., A.M.

This appeal of the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] dated 01.08.2020 for AY 2020-21.

2. The assessee has raised the following grounds of appeal: -

- “1. *The Order of learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)" for brevity) to the extent prejudicial to the Appellant is bad in law.*
2. *The CIT(A) has erred in;*
 - i Not condoning the delay in filing the appeal without appreciating that the Appellant had reasonable cause and the same was*

demonstrated. The CIT(A) has not considered detailed reasons given in the condonation petition.

- ii. Rejecting to admit the appeal on the ground of delay without providing a personal hearing to the Appellant.*
- 3. The CIT(A) has erred in not adjudicating the action of learned AO in treating contingent liability of Rs. 44,58,57,745/- as not allowable expenditure u/s 37 without appreciating that;*
 - a) Such adjustment cannot be made u/s 143(1)(a) of the Act;*
 - b) The Appellant did not claim contingent liability as a deduction. So, the question of disallowing does not arise;*
 - c) The contingent liability is related to bank guarantee and letter of credit issued by the Appellant in favour of customers and same was not debited to profit and loss account, but was only disclosed in Notes as Contingent liability.*
- 4. The CIT(A) has erred in not adjudicating learned AO's action of disallowing Rs.19,76,515/- without appreciating that said adjustment represents the impact of GST on the opening and closing inventory as per Section 145A of the Act and same adjustment has been consistently made by the Appellant.*
- 5. The CIT(A) has erred in not adjudicating the action of learned AO of;*
 - a. Denying TDS credit of Rs.7,32,657/- as claimed in the return of income without appreciating income pertaining to the said credit has been offered to tax in the return of income.*
 - b. Not allowing TDS credit of Rs.4,33,919/- appearing in Form 26AS post filing of income tax return without appreciating that the income pertaining to the said credit has been offered to tax in the return of income.*
- 6. The learned AO has erred in levying as interest u/s 234B of Rs. 2,41,05,711/- and 234C of Rs. 57,96,851/-. On the facts and circumstances of the case, interest under section 234B & 234C of the Act computed in excess of the sum reported in return of income is not leviable and incorrect. The Appellant denies its liability to pay interest under section 234B & 234C.*

The Appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

3. The assessee is a private limited company engaged in the business of Heating, Ventilation and Air Conditioning activities and performs AMC services. The assessee filed the return of income for AY 2020-21 declaring a total income of Rs. 9,75,05,600/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (the Act) in which an addition of Rs. 44,84,06,342/- was made. The addition made in the intimation u/s. 143(1) of the Act included contingent liability towards bank guarantee and letter of credit to the tune of Rs. 44,58,57,745/-. The assessee filed a petition for rectification u/s. 154 of the Act stating that the impugned addition has not been claimed as a deduction in the P&L Account and is a disclosure in the financial statements as contingent liability. The AO rejected the petition made u/s. 154 and upheld the addition made in the intimation u/s. 143(1) of the Act. Aggrieved, assessee filed further appeal before the CIT(A).

4. There was a delay of 484 days in filing the appeal before the CIT(A) and the assessee filed a condonation petition in this regard. The CIT(A) dismissed the appeal filed by the assessee without condoning the delay. The assessee is in appeal before the Tribunal against the order of the CIT(A).

5. The learned A.R. submitted that the assessee had a reasonable cause for the delay in filing the appeal before the CIT(A) and in this regard drew our attention to the affidavit filed by the assessee before the CIT(A). The relevant extract of the said affidavit stating the reasons for delay in filing the appeal is given below: -

“7. The Petitioner submits that it could not file the appeal within due date for the following reasons.

8. The Petitioner submits that its finance team, which has 10 members, was completely held up with migration of accounts from Tally ERP to Microsoft Dynamics Navision Software.

9. Your honour would appreciate transition process involves several stages like initial discussions, understanding software and company

requirements, data migration, software customization, user training, system testing etc. Each of these stages demand a significant amount of time and meticulous attention to details to ensure a smooth and successful migration of data.

10. *The transition process also got delayed due to Covid 19, which had significant impact on the operations from February 2020 to August 2022 and also some key persons of the company got admitted due to Covid 19. Further, as it was not direct system to system integration, the Petitioner had to manually enter the opening balances and all transactions from 01.09.2014 to 31.03.2022.*
11. *The company went live with the new accounting software from 11.04.2022 and as complete data migration did not happen, the pending backlog was being completed parallelly. In the first year of going live, the desired reports were not available in the software and the small finance team was struggling throughout FY 2022-23 to generate the appropriate finance reports and MIS reports. The finance team struggled during the entire period till the finalization of accounts in August 2023. Due to these difficulties, the communications/notices received were unnoticed and appropriate action could not be taken in time.*
12. *Further, there was change in the Statutory Auditors of the company from M/s Manjunath Bargeshappa & Associates to M/s BSR & Co. LLP (KPMG) from FY 2022-23. Due to which, the finance team had to spend a significant additional amount of time in assisting the statutory auditors to complete the audit. All this further added to delay.*
13. *Due to above stated reasons, the appeal before the CIT(A) could not be filed in time. The delay in filing the appeal was not deliberate or intentional but due to a bonafide and reasonable cause. An Affidavit is also enclosed.”*

6. On merits the learned A.R. submitted that the addition made in the intimation u/s. 143(1) is based on the incorrect reporting made by the auditor in Form 3CD for the year under consideration. The learned A.R. further submitted that the auditor has erroneously mentioned the amount of bank guarantee which is reported as contingent liability in the notes to the account (page 73 of the paper book) as amount debited to the P&L Account (page 84 of the paper book). Accordingly, the learned A.R. prayed that on merits the addition made by the AO is not sustainable and accordingly prayed for a direction to the CIT(A) to condone the delay and adjudicate the appeal on merits.

7. We have heard the rival contentions and perused the material on record. The assessee's return of AY 2020-21 is processed u/s. 143(1) of the Act and an addition is made stating that the amount debited to the P&L Account u/s. 37 of the Act is contingent in nature. On perusal of records we notice that the said disallowance is towards bank guarantee reported as contingent liability in the notes accounts which the auditor has reported as debited to the P&L account in the Tax Audit Report. There is delay of 484 days in filing the appeal before the CIT(A) and the CIT(A) has dismissed the appeal without condoning the delay rejecting the submissions made in the affidavit stating the reasons for the delay. The Id AR argued that the addition made is substantial considering the financial status of the assessee and there is no reason for the assessee to deliberately file the appeal belatedly where there is risk of appeal being rejected on that ground. Accordingly the issue for our consideration is whether the CIT(A) should be directed to condone the delay and consider the appeal on merits. It is a settled legal position that 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. Further it is a widely accepted principle that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. In view of the facts peculiar to the case and considering the submission of the Id AR that the addition is made based on incorrect reporting by the auditor, we are inclined to direct the CIT(A) to condone the delay and consider the issue on merits. The assessee is directed to file the necessary details as may be called for by the CIT(A) and cooperate with the appellate proceedings. Before parting we would like mention that the decision to direct the CIT(A) to

condone the delay is purely based on the facts unique to this case and cannot be used as precedence. It is ordered accordingly.

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

Order pronounced in the open Court on 21st October, 2024.

Sd/-
(George George K.)
Vice President

Sd/-
(Padmavathy S.)
Accountant Member

Bengaluru, Dated: 21st October, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

//True Copy//

By Order
Assistant Registrar
ITAT, Bangalore