

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.220/Nag./2024
(Assessment Year : 2014-15)

M/s. Unijules Life Sciences Ltd.
B-35/36, MIDC Kalmeshwar
Nagpur 441 501 PAN – AAACU8032D

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-2(1), Nagpur

..... Respondent

Assessee by : Shri Kapil Hirani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/11/2024

Date of Order – 28/11/2024

ORDER

PER K.M. ROY, A.M.

The captioned appeal by the assessee is against the impugned order dated 08/11/2021, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15.

2. The assessee has raised following grounds:-

"1) The Assessment u/s 143(3) of Income Tax Act, 1961 ("Act") is illegal, invalid and deserves to quashed in the interest of justice.

2) On the facts and circumstances of the case and in law, in view of order dated 08.03.2019 passed by Hon'ble NCLT declaring moratorium u/s 14 of Insolvency and Bankruptcy Code, 2016 ("I&B Code") the order passed by Hon'ble CIT(A) dated 08.11.2021 is bad in law and liable to be quashed in the interest of justice.

3) On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming addition of Rs.

2,90,16,000 treating the purchases made by the Appellant to that extent as bogus purchases which is illegal and the addition so made deserves to be deleted as per law.

4) On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming addition of Rs. 13,23,911 as cash payments not recorded in the books of accounts which is illegal, and which deserves to be deleted as per law.

5) On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming addition of Rs. 69,63,650 allegedly representing unaccounted cash payments which is illegal, and which deserves to be deleted as per law.

6) On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming addition of Rs. 1,02,23,236 representing disallowance of depreciation on purchase of assets allegedly held bogus which is illegal, and which deserves to be deleted as per law.

7) On the facts and circumstances of the case and in law, the AO grossly erred in making and the CIT(A) grossly erred in confirming addition of Rs. 194,04,18,971 representing disallowance of bad debts written off debited to the Profit & Loss Account which is illegal, and which deserves to be deleted as per law.

8) The Appellant craves leave to add, amend, alter, vary and / or withdraw the above ground of appeal with the kind permission of the Hon'ble Tribunal."

3. When this appeal was called for hearing, the Registry has pointed out that there is a delay of 824 days. The learned Counsel, Shri Kapil Hirani, appearing for the assessee furnished a chart showing date of events to show the number of days of in filing the appeal:-

Particulars	Date	Days of Delay
CIT(A)'s order	08/11/2021	-
Due date for filing appeal before the Income Tax Appellate Tribunal (ITAT) (60 days)	07/01/2022	-
Extended due date (as per Supreme Court Order)	01/06/2022	205
ITAT appeal filed	10/04/2024	679
Total Days of Delay:-		884

4. The learned Counsel for the assessee further drew our attention to the order dated 08/03/2019, passed by the National Company Law Tribunal, Mumbai Bench, in Punjab National Bank v/s Unijules Life Sciences Pvt. Ltd., C.P. 3030(IB)/MB/2018, particularly Para-23, which is reproduced below:-

"23. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate Insolvency resolution process against the corporate debtor deserves to be admitted."

5. Further, the learned Counsel for the assessee also highlighted the contents of the Affidavit furnished for condonation of delay in filing the present appeal, which is also reproduced below:-

"We, M/s. Unijules Life Sciences Ltd., (hereinafter referred to as "Appellant") through our Resolution Professional, CA Amit Poddar ("Deponent"), do hereby take oath and state on solemn affirmation as under: -

1. The Appellant is assessed to Income Tax vide Permanent Account Number ("PAN") - AAACU8032D.

2. The Appellant is before the Hon'ble ITAT Nagpur challenging the additions made for AY 2014-15 by Assistant Commissioner of Income Tax, Central Circle 2(1) vide assessment order dated 30.03.2016 and confirmed by CIT(Appeals) 3, Nagpur vide order dated 08.11.2021. Accordingly, the limitation for filing appeal before the Hon'ble ITAT, Nagpur Bench, Nagpur was upto 07.01.2022.

3. As per the order dated 10.01.2022 of the Hon'ble Supreme Court in M.A No. 21 of 2022 wherein it has been held that where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022, is greater than 90 days, that longer period shall apply.

4. Thus, in the present case the limitation for filing the 2nd appeal stood extended to 90 days from 01.03.2022 which is 01.06.2022.

5. The Appellant is presently undergoing Corporate Insolvency Resolution Process ("CIRP") under the provisions of The Insolvency and Bankruptcy Code,

2016 ("IBC") vide order dated 08.03.2019 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT"). Copy of order enclosed.

6. The undersigned is presently the Resolution Professional of the Appellant company as appointed by the Hon'ble NCLT.

7. The Appellant company being under CIRP, the erstwhile Board of Directors stood suspended immediately upon passing of the order dated 08.03.2019.

8. The erstwhile Board of Directors were aware of the various proceedings under Income Tax Act, 1961 and they being suspended, it was very difficult to gather and compile the details of income tax proceedings going on against the Appellant company.

9. It was on account of the time required to gather from various sources the relevant documents pertaining to the impugned appeal that the delay in filing of the present appeal was caused.

10. The Appellant in light of the above facts and in the interest of natural justice prays before your honours to kindly condone the marginal delay in filing of the appeal in the interest of natural justice.

11. I have gone through the contents of paragraphs 1 to 10 herein above and say that they are believed by me to be true.

Hence solemnly affirmed, verified and signed at Nagpur on this 6 day of April, 2024."

6. On a perusal of the above, it is manifest that there is a sufficient cause for the delay in filing the present appeal and in our opinion technicalities should not come as an impediment for grant of justice. In this view of the matter, we condone the delay of 824 days.

7. While going through the impugned order passed by the learned CIT(A), we find that the learned CIT(A) has dismissed the assessee's appeal, because there was no response on a number of occasions. However, we find that the learned CIT(A) has not passed a speaking order and in this regard, here, we would like to refer to the judgment of the Hon'ble Jurisdictional High Court rendered in PCIT (Central) v/s Premkumar Arjundas Luthra (HUF), [2017] 297 CTR 614 (Bom.), wherein the Hon'ble High Court has held as under:-

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251 (2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

8. In view of the foregoing discussions and while going through the impugned order passed by the learned CIT(A), we are of the opinion that the learned CIT(A) ought to have passed a speaking order and in accordance with law, which the learned CIT(A) has failed to do so. Consequently, we set aside the impugned order passed by the learned CIT(A) and direct him to adjudicate the issues raised by the assessee in this appeal denovo after providing reasonable opportunity of being heard to the assessee. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 28/11/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 28/11/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur