

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM& Shri Pradip Kumar Choubey, JM]

I.T.A. No. 386/Kol/2024
Assessment Year: 2012-13

M/s. Startrack Developer Pvt. Ltd. Lachmanpur PO. Ramkanali, PS Raghunathpur, Purulia, West Bengal- 723142. (PAN: AAQCS 5114C)	Vs.	ITO, Ward-9(1), Kolkata.
Appellant		Respondent

Date of conclusion of Hearing	16.12.2024
Date of Pronouncement	17.12.2024
For the Assessee	Shri Soumitra Choudhury, Advocate
For the Revenue	ShriSubhendu Datta, CIT,DR

ORDER

Per Shri Rajesh Kumar, AM

The appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appellate Tribunal (NFAC), Delhi dated 06.05.2023 for AY 2012-13 arising out of assessment order passed u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by ITO, Ward-9(4), Kolkata dated 12.03.2015.

2. At the outset we note that the assessee’s appeal is time barred by 236 days for which the assessee has filed condonation petition along with affidavit of Shri Sanjoy Karmakar, director of the assessee explaining the reasons for delay in filing the appeal. From the said condonation petition as well as the affidavit, we note that Shri Akash Das, Accountant, who was looking after the taxation matters handed over the appellate order to the AR Shri Prasanta Kumar Roy Burman, FCA, who thereafter left the company and did not inform the management about the appellate order. Shri Prasanta Kumar Roy Burman has also expired on 29.05.2023. Thus, only when the AO was pressing hard for the deposit of demand in the end of January, 2024 the assessee came to know about the said appellate order having been passed. Accordingly, Ld. Counsel for the assessee Shri Soumitra Choudhury was

approached in the second week of February, 2024 and the appeal was filed immediately with the delay of 236 days. After hearing the rival contentions and perusing the material available on record, we find that the delay is for sufficient and bona fide reasons and accordingly, we are inclined to condone the same by admitting the appeal for adjudication.

3. The Ld. Counsel for the assessee, at the outset, drew our attention to page no. 3 of the appellate order passed by Ld. CIT(A) and submitted that there was four opportunities allowed by the Ld. CIT(A) one on 06.03.2021, second on 31.08.2021, 3rd on 27.07.2022 and 4th on 01.05.2023 which according to him, all fell within the Covid period and, therefore, hearing could not be responded to by the assessee. The Ld. AR also submitted that even before the AO complete details/evidences could not be filed and also the summons issued u/s. 131 of the Act could not be complied either by furnishing details/evidences sought or registering personal appearances. The Ld. AR, therefore, prayed that in the interest of justice and fair play, the appeal of the assessee may kindly be restored to the file of the Ao for de novo adjudication after taking into all evidences and information which may be furnished by the assessee in the set aside proceedings.

4. The Ld. DR, on the other hand, left the decision to the wisdom the Bench.

5. After hearing the rival contentions and perusing the material available on record, we observe that the Ld. CIT(A) has dismissed the appeal when the assessee reply on the four occasions allowed by the Ld. CIT(A) which all fell within the Covid period. Besides, we note that even before the AO the case was not properly represented as evidences were not filed. Even the summons issued u/s. 131 were not complied with by filing necessary documents by the subscriber leave aside the personal attendance of the director of the assessee company. Under the circumstances, we are of the view that the ends of justice could be well served if the appeal is restored to the file of the AO with a direction to decide the same de novo after taking into account all the evidences and record and also the evidences which may be filed by the assessee. Moreover, the assessee is also directed to make compliance to the summons issued u/s. 131 of the Act in accordance with law. Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, appeal of the revenue is allowed for statistical purposes.

Order is pronounced in the open court on 17th December, 2024

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 17th December, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–M/s. Startrack Developers Pvt. Ltd.
2. Respondent – ITO, Ward-9(1), Kolkata.
3. CIT(A), NFAC, Kolkata
4. Pr. CIT
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata