

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'D', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. K. NARASIMHA CHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.7261/Del/2017
(Assessment Year : 2013-14)

Thai Glico Co. Ltd., 1170, 11 th Floor, Tower-B1, Spaze – 1 – Tech Park, Sohna Road, Sector – 49, Gurgaon, Haryana - 122 001 PAN : AAECT 2002 L (APPELLANT)	Vs.	DCIT Circle – 3(1)(1), International Taxation New Delhi (RESPONDENT)
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Assessee by	Shri Nageshwar Rao, Adv.
Revenue by	Dr. Arun Kumar, Sr. D.R.

Date of hearing:	21.12.2021
Date of Pronouncement:	28.12.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 22.09.2017 of the Commissioner of Income Tax (Appeals)-23, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a non-resident Indian company stated to have been incorporated as per law of Thailand and is stated to be engaged in manufacturing and marketing of Confectionary products. In India, to explore the new market for its products the assessee company established a branch office w.e.f 30.09.2011 mainly to carryout trading activities in India. During the year under consideration, the branch office was stated to have been engaged in marketing, promotion and advertisement etc. of the Thai Gluco's products in India. Assessee filed its return of income for A.Y. 2013-14 on 22.11.2013 declaring total income of Rs. Nil. The case was selected for scrutiny under CASS and consequently, notices u/s 143(2) and 142(1) of the Act was issued and served on the assessee. During the course of assessment proceedings, AO on perusal of the audited accounts noticed that during the year under consideration, assessee had no receipts but had incurred expenses of Rs.1,86,22,133/- and had claimed losses in its return of income. According to AO, the due date of filing the return of income was 30.09.2013 but assessee has filed its return of income on 22.11.2013 which according to the AO was after the due date prescribed u/s 139(1) of the Act. AO also noticed that Form 3CEB which assessee had filed showed Nil international transactions. Assessee was therefore asked to show-cause as to why the loss claimed during the year under consideration not be

disallowed as the return of income was not been filed within the due the date prescribed u/s 139(1) of the Act. Assessee in response to the aforesaid show-cause notice *inter alia* submitted that assessee was of the belief that transfer pricing provisions was applicable to it and accordingly Form 3CEB reporting the Nil transactions was filed to avoid any TP non-compliance under the Act. It was further submitted that according to the assessee since the transfer pricing provisions was applicable, the due date for filing of return of income was 30th September 2013 in view of Explanation 2(aa) to Section 139 of the Act. The submissions of the assessee was not found acceptable to AO. AO noted that Form 3CEB filed by the assessee showed that assessee did not have any international transactions during the year under consideration and since there was no international transactions or specified domestic transactions, the benefit of extended due date for filing the return of income was not available to the assessee. He was further of the view that Form 3CEB was got prepared to avail the extended period for filing the return of income and to carry forward the losses incurred during the year under consideration. He accordingly denied the carry forward losses of Rs.1,86,22,133/- to the assessee.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 22.09.2017 in Appeal No.40/17-18 upheld the order of AO. Aggrieved by the order of

CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That order passed by Ld. CIT(A)-23, New Delhi (hereinafter referred to as “the Ld. CIT(A)”) under Section 250/ Deputy Commissioner Income Tax, Circle 3(1)(1), International Taxation (Learned Assessing Officer)(hereinafter referred to as “Ld. AO”) under Section 144C(3) r.w.s 143(3) of the Income Tax Act, 1961 (‘the Act’) is bad in law and liable to be quashed.*
2. *That Ld. CIT(A)/AO erred on facts and in law, in concluding that the return filed on 22.11.2013 was not a valid retrun under section 139(1).*
3. *That Ld. CIT(A)/AO erred on facts and in law, in holding that form 3CEB was filed to extend the deadline for filing of return and in disregarding the fact that appellant bona fide filed form 3CEB to avoid any transfer pricing non-compliance in view of decision of Hon’ble Bombay High Court in Shell India Markets (P.) Ltd. Vs. ACIT [369 ITR 516] and Vodafone India Services (P.) Ltd. Vs. Union of India (369 ITR 511) and filed tax return as per provisions of the Act.*
4. *That Ld.CIT (A)/ AO erred on facts and in law, in initiating penalty proceedings under section 274 r.w.s 271 of the Act, without considering the fact that the appellant has neither concealed any particulars of income nor furnished inaccurate particulars of income.*

The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

The Appellant prays for appropriate relief based on the said grounds of appeals and the facts and circumstances of the case.”

5. At the outset, Learned AR submitted that though the assessee has raised various grounds but the sole controversy is whether the return filed by assessee on 22.11.2013 can be

considered to have been filed on time and therefore assessee eligible to claim the carry forward of losses.

6. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that during the year under consideration, assessee had received money towards capital contribution from its AEs. It was further submitted that in view of specific inclusion of the term 'PE' in the definition of the term 'enterprise', the transactions between the non residents and its branch office (BO) or its project office (PO), which constitutes a PE in India could be regarded as 'transactions between two enterprises' for the purpose of Section 92 of the Act. It was further submitted that the transactions between the non-resident and the assessee would attract transfer pricing provisions and according to the understanding of the assessee, it was of the view that transfer pricing provisions was applicable and accordingly assessee filed the Form 3CEB reporting Nil transaction to avoid any TP non-compliance under the Act. It was further submitted that there was no *malafide* intention on the part of the assessee to file the Form 3CEB to get the benefit of extended time for filing the return of income. He therefore reiterated that since the assessee was of the belief that the transfer pricing provisions was applicable to it, the due date of filing of return of income was 30th November 2013. He further submitted that the issue whether the capital contribution received by the assessee is an "International Transaction" so as to attract the transfer pricing provisions was a

debatable issue. He therefore submitted that the return of income filed by the assessee be considered to have been filed in time in view of Explanation 2(aa) to Section 139 of the Act and the benefit of carry forward loss be allowed to the assessee.

7. Learned DR on the other hand took us to the finding of CIT(A) and submitted that the lower authorities have given a finding that in Form 3CEB filed by the assessee, the International Transactions entered into by the assessee was stated to be Nil and therefore in such a situation assessee cannot claim the benefit for extended date for filing of return of income. He thus supported the order of lower authorities.

8. We have heard the rival submissions and perused the materials available on record. The issue in the present appeal is whether the return filed by the assessee on 22.11.2013 for A.Y. 2013-14 can be considered to be a return filed in time for availing the benefit of carry forward losses in the year under consideration.

9. It is an undisputed fact that assessee had filed the return of income for A.Y. 2013-14 on 22.11.2013 whereas as per Explanation 2(a) to Section 139, the last date for filing the return of income was 30.09.2013. It is also an undisputed fact that assessee had filed Form 3CEB. The perusal of Form 3CEB placed in the paper book reveals that it has been certified by the

Chartered Accountant on 30.11.2013 and further as per the aforesaid form, the value of international transactions or specified domestic transactions is reported at Rs. Nil. It is also an undisputed fact that the return of income has been filed by assessee on 22.11.2013 meaning thereby that the Form 3CEB has been obtained after the filing of return of income. Further, the perusal of the Form 3CEB also reveals that there is no mention of the amount received on capital account nor does it state any reason for not reporting the receipt amount on capital account in the Form 3CEB. Considering the totality of the aforesaid facts, we find that the CIT(A) was fully justified in holding that since assessee has filed its return of income beyond the stipulated due of 30.09.2013, the assessee was not eligible to claim the carry forward of the losses. We thus find no infirmity in the order of CIT(A) and therefore we uphold the order of CIT(A). **Thus the grounds of assessee are dismissed.**

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 28.12.2021

**Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 28.12.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI