

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.868/Bang/2023
Assessment year : 2016-17

M S Sorters Pvt. Ltd., No.235 R, 3 rd Floor, KIADB Industrial Area, Bommasandra, Bangalore – 560 099. PAN: AAGCM 0193F	Vs.	The Assistant Commissioner of Income Tax, Circle 4(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Srikanth, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	07.12.2023
Date of Pronouncement	:	11.12.2023

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/AST/S/143(3)/2018-19/1009977265(1) dated 29.5.2018 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17 on the following grounds:-

“1. The Appellant is filing Appeal with the delay of 117 days and a separate_ application and affidavit are filed along with appeal papers. The Appellant prays before ITAT to Condone the delay in filing of Appeal.

2 The AO and CIT (A) have not correct in not providing sufficient opportunity to Appellant to justify the genuineness of the expenses claimed in the Return of Income to the extent of Rs. 2,83,67,824/-.

3. The AO was not correct in disallowing Travelling Expenses of Rs. 34,30,673/-, without verifying genuineness of expenditure, though the said expenditure spent for business purpose.

4. The AO was not correct in disallowing Sales Commission of Rs. 88,67,896/-, without verifying genuineness of expenditure, though the said expenditure spent for business purpose.

5. The AO was not correct in disallowing Legal & Professional Expenses of Rs. 40,99,728/-, without verifying genuineness of expenditure, though the said expenditure spent for business purpose.

6. The AO was not correct in disallowing Loss on Foreign Currency Transactions of Rs. 92,46,486/-, without verifying genuineness expenditure as this is relating to purchase transactions.

7. The AO was not correct in disallowing Research & Development Expenses of Rs. 27,23,041/-, without verifying genuineness of expenditure as this is relating to purchase transactions

8. The CIT (A) was not correct in not considering the sample Bills and ledger extracts submitted, while filing of Appeal memo in Form 35 and there was no discussion about omission of the same.

9. The Appellant craves leave to add, to alter, to amend or to delete any of the grounds that may be urged at the time of hearing of the Appeal

Wherefore on the above grounds and on such other grounds the prays the Appellate Authority to set aside the Revision order passed u/s.263 as above and may pass such other as the Appellate Authority deems fit.”

2. There is a delay of 117 days in filing the appeal by the assessee before the Tribunal and application dated 05.10.2023 for condonation of delay has been filed stating that the CIT(A), NFAC has uploaded order passed u/s. 250 of the IT Act in E-proceedings Systems on 15.05.2023 and hard copy of the appellate was not received by Appellant for AY 2016-17. Thereafter, the Appellant Company's parent company namely, M/s Milltec Machinery Private Limited has been merged with another company. Appellant company's accounts were looked after by its parent company Accountant. After merging process, the Appellant Company has created new e mail ID for this Company. However the same could not updated in the E-Portal as the said accountant was not aware of the same. After merger process, the Appellant Company has stopped to see old email as they have created new E mail. However the Accountant has not updated the new email in Income Tax Portal. The Appellant came to know about passing of order by CIT (A), when assessing office sent demand notice u/s.156 for making payment of outstanding demand. Thereafter the appeal came to be filed before the Tribunal. The Id. AR submitted that the delay may be condoned due to above reasons.

3. After hearing both the parties, there is sufficient reason for the delay in filing the appeal and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, we condone the delay.

4. The brief facts of the case are that the assessee is engaged in the business of manufacturing and assembling of color sorters. It filed return of income on 31.08.2016 declaring loss of Rs.74,94,878. The return was processed u/s. 143(1). subsequently the case was selected for limited scrutiny under CASS and statutory notices issued to the assessee. The AO that assessee has claimed huge expenditure in the Profit & Loss account and called for explanation. Since the assessee failed to submit proof of the same, the AO made disallowance of the following expenditures claimed and made a total addition of Rs.2,56,44,783:-

- (a) Travelling & Conveyance expenses – Rs.34,30,673.
- (b) Sales Commission expenses – Rs.88,67,896.
- (c) Legal & Professional expenses – Rs.40,99,728.
- (d) Loss on foreign currency transactions – Rs.92,46,486.

5. Further, the AO noted that assessee has debited Rs.27,23,041 towards Research & Development expenses. For want of details of the same, the AO treated it as capital expenditure and made addition of Rs.27,23,041. Since the nature of R&D could not be ascertained, no depreciation was allowed.

6. On appeal, the CIT(Appeals) issued various notices on different dates, but the assessee did not respond. Accordingly, the CIT(Appeals) decided the appeal on the basis of material available on record and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

7. The Id. AR submitted that the notices issued by the CIT(Appeals) were not served to the assessee and the assessee could not see the emails due to reasons as explained above in the reasons for condonation of delay. The AO has made adhoc disallowance under different heads for want of evidence from the assessee. He prayed for another opportunity to the assessee to substantiate assessee's claim before the AO and he undertook to comply with the notices and file necessary documents in support of the claim.

8. On the other hand, the Id. DR opposed to providing another opportunity to the assessee since the assessee did not comply to the various notices issued by AO and the CIT(A).

9. After perusing the material on record, we note that assessee has made additions for want of proper explanation from the assessee. Before the authorities below, the assessee has not represented its case in terms of notice issued by the lower authorities. Considering the prayer of the assessee, in the interest of justice, we deem it fit to provide one more opportunity to the assessee to substantiate its claim. Accordingly we restore the case to the Assessing Officer for *de - novo* consideration and decision as per law, after reasonable opportunity to the assessee. The assessee is directed to comply with the notices issued by the revenue authorities with necessary evidence in support of its case and also intimate the correct email-id / communication address and telephone/mobile no. of the assessee to the department. The

assessee is also directed not to seek unnecessary adjournment for early disposal of the case.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 11th day of December, 2023.

Sd/-
(GEORGE GEORGE K.)
VICE PRESIDENT

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 11th December, 2023.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.