

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1471/Bang/2024
Assessment Year: 2015-16

Sri Sumeru Housing Private Limited 33-44, 1-2, 8 th Main, 4 th Cross RMV Extension Sadashivanagar Bangalore 560 080 Karnataka PAN NO : AAJCS0958D	Vs.	DCIT Circle-6(1)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Nagarajan, Director of the Company
Respondent by	:	Sri V. Parithivel, D.R.

Date of Hearing	:	09.09.2024
Date of Pronouncement	:	23.09.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of NFAC passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) dated 5.6.2024 for the AY 2015-16. The assessee has raised following grounds of appeal:

- That, in the facts and circumstances of the Appellant's case, the impugned order passed by the learned lower authorities is highly arbitrary, unjust and contrary to law, facts and circumstances of the case.*
- That, in the facts and circumstances of the Appellant's case the learned lower authorities were not justified in treating a part of the business expenses as "unreasonable" and thereby adding 20% of the expenses to income, in spite of the assessee producing evidences available and explaining that much evidence had been lost due to reasons beyond the control of the appellant.*
- That, in the facts and circumstances of the Appellant's case, the learned lower authorities were not justified to have disallowed 20% of the business expenses, as "unreasonable", and ultimately taxing and levying penalty equal to the tax,*

under section 271(1)(c) merely based on assumptions and presumptions, ignoring the brought forward losses of the appellant.

4. *That, in the facts and circumstances of the Appellant's case, the learned lower authorities ought to have been guided by the well settled law on the issue as declared by the Hon'ble I TAT (Mumbai Bench E) in its decision dated 03.06.2015 in ITA No.5351/Mum./2012 for the Assessment Year 2005-06, which had been subsequently followed by the Hon'ble High Court of Madras in the case of RatthaCitadines Boulevard Chennai (P.) Ltd. Vs. Deputy Commissioner of Income Tax, Corporate Circle 5(1), Chennai in TCA No. 612 of 2016 and the ratio of which are squarely applicable to the appellant's case.*

For the above grounds and such other grounds that may be urged at the time of hearing, with kind permission, Appellant most humbly pray that the Appeal may kindly be allowed in the interest of justice and the relief granted as below:

- i) The order u/s 250 of the Income Tax act dismissing our appeal in form 35 be set aside*
- ii) The order u/s 271 (1) (c) of the Income Tax Act passed without hearing our grounds be set aside*
- iii) The adhoc disallowances made in the Assessment order exparte be deleted, the details being not communicated as requested by the appellant.*

1.1 There is a short delay of 3 days in filing the appeal before this Tribunal.

2. Brief facts of the case are that the assessee is a Company engaged in the business of real estate and is assessed to Income Tax under the jurisdiction of the Id. DCIT, Circle-6(1)(2), Bengaluru. The assessee company had filed its Return of Income for the assessment year 2015-16 declaring total loss of Rs.32,26,950/-. Thereafter the said Return was taken up for the scrutiny by the AO. As claimed by the assessee no proper notice were served at all on them & therefore the learned Assessing Officer concluded the Assessment on 26/12/2017 u/s 144 of the Act determining the total Income of Rs.19,39,920. Thus the total addition of Rs. 51,66,870/- was made by the AO with the following observations-

“4the expenses debited under the head repair to plant and machinery, salaries and wages, advertisement, consultancy fees, travelling expenses, business promotion expenses, site maintenance expenses and other were not in line with the income declared and that the assessee did not furnish bills/vouchers for the said expenses. As the expenses appeared to be unreasonable, 20% of expenses debited under each of the above was disallowed which worked out to Rs.51,66,870/- brought to tax" thus subjecting the same to taxation.”

3. Thereafter the notices u/s 274 r.w.s. 271(1)(c) along with the reminder were also issued however as no reply has been received, the Assessing officer then passed the penalty order U/s 271(1)(c) of the Act with the following observations-

"6.3 ..the assessee has not furnished any justification for the unreasonable expenses. Even the assessee has failed to submit documentary evidence in support of the expenses.

6.4 Thus the assessee has submitted inaccurate particulars in terms of explanation (IA) & (B) of Sec.271(1)(c) of the IT Act and the case laws cited by the assessee can be distinguished on facts from the present case.

7. In view of the above, I am of the considered view that this is a fit case for levy of penalty u/s. 271 (1)(c). Amount of tax tax sought to have been evaded is Rs.15,96,563/-.....After careful consideration, a minimum penalty of Rs.15,96,563/- is levied.”

3.1 Being aggrieved by the Penalty Order passed u/s 271(1)(c) of the Act, the Assessee had filed the Appeal before the learned Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre (NFAC).

3.2 The Id. CIT(A)/NFAC dismissed the Appeal by emphasizing that in spite of several opportunities granted, the appellant company had not availed any of the opportunity to present its case & filed any submissions/records in support of its claims. Based on this, the Id. CIT(A) also drawn a conclusion that the appellant company is not interested in pursuing the appeal. The Id. CIT(A)

was also of the view that even otherwise on the merits he did not see any reason to differ with the findings of AO since no attempt has been made by the assessee to discharge its onus.

3.3 Being aggrieved by the aforesaid order of the learned Commissioner of Income Tax (Appeals) dated 05.06.2024, the Assessee has preferred the present appeal before the Tribunal.

4. Before us the Director of the Company submitted that the learned authorities below have failed to appreciate that the mere disallowance of expenses or claims by the AO does not amount to concealment of income or furnishing inaccurate particulars. A genuine difference of opinion on the allowability of certain expenses should not be equated with concealment, more particularly when the business is incurring losses. Further the Director of the Company submitted that penalty cannot be levied for the disallowances of certain expenditure which were purely based on the percentage basis on assumptions & presumptions. Further the Director of the Company submitted that he was unable to login into the income tax portal due to the technical reasons. They had no option available but to file written submissions to the CIT (Appeals)/NFAC, by email. However, the replies sent by the assessee in response to the notices u/s. 250 to the authorized email id of the CIT(Appeals) NFAC have been unnoticed and accordingly the Order u/s. 250 has been passed without providing opportunity of being heard. The said default had occasioned leading to the proceedings being concluded by the learned CIT(A) ex-parte and which has caused severe injustice to the assessee's interest.

4.1 The ld. D.R. submitted that the appeals may be dismissed in limine without adjudicating the same as the delay in filing the Appeal is only due to the negligence & carelessness of the assessee and accordingly the delay in filing Appeal shall not be condoned. Further the ld. DR vehemently submitted that even before the Ld.CIT(A)/NFAC the assessee company filed the appeal belatedly by approx 48 days. Lastly the ld. DR relied on the Order of the ld. CIT(A) & stated that as the assessee company had not availed any opportunity to present its case & filed any submissions/records in support of its claims, the ld. CIT(A) has rightly dismissed the Appeal stating that the assessee does not wish to pursue the appeal.

5. We have heard the rival submissions and perused the materials available on record. The contention of the Director of the assessee company is that the assessee company has no malafide intention in filing the appeal belatedly before this Tribunal. It is to be noted that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it has established that there exists a sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflects sufficient and reasonable cause on the part of the assessee in not filing this appeal within the prescribed time.

5.1 We have gone through the reasons explained by the assessee for filing the appeal belatedly before this Tribunal. While considering the issue of condonation of delay the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late (2) Refusing to condone delay can result in a meritorious

matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) *'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?*

The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) *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 in injustice being done because of a nondeliberate delay.*

(5) *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

(6) *It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

5.2 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 nondeliberate delay. Therefore, in our opinion, by preferring the substantial justice, the short delay of 3 days has to be condoned.

5.3 In view of the above, we are condoning the delay of 3 days in filing the appeal before this Tribunal belatedly.

6. Now coming to the merit of the issue, the Id. CIT(A) has dismissed the appeal ex-parte on the reason that assessee has not

responded to the various notices issued to the assessee and filed no submissions before NFAC. We strongly deprecate non-cooperation attitude of assessee in non-filing the submission before NFAC. However, considering the request of the Director & taking into consideration the technical difficulty in login to the portal as well as in the interest of justice and equity, we are of the view that assessee ought to be provided with one more opportunity to present its case and accordingly the issue in dispute is remitted to the file of CIT(A)/NFAC for fresh consideration and to decide the same, after giving an opportunity of hearing to the assessee. The assessee is also directed to submit all the documents/record before Id. CIT(A) in support of its claim.

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

Order pronounced in the open court on 23rd Sept, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 23rd Sept, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.