

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER  
and  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

ITA No.1121/Bang/2014  
(Assessment years: 2006-07)  
and  
ITA No.1122/Bang/2014  
(Assessment years: 2006-07)

M/s. Farico,  
No.153, Old Madras Road, Ulsoor,  
Bangalore. ... Appellant  
*PAN: AACFM2217K*

Vs.

Asst. Commissioner of Income-tax,  
Circle 9(1),  
Bangalore. ... Respondent

Appellant by: Shri S.R.Kiron, CA.  
Respondent by: Dr. P.K.Srihari, Addl.CIT(DR)

Date of hearing : 14/01/2016  
Date of pronouncement: 12/02/2016

**O R D E R**

**Per VIJAY PAL RAO, JM:**

These two appeals by the assessee are directed against two separate orders of the CIT(A) one arising from the assessment order u/s 143(3) and another from the penalty order passed u/s 271(1)(c) [hereinafter referred to as 'the Act' for

short][hereinafter referred to as 'the Act' for short] for the assessment year 2006-07.

2. First we take up the quantum appeal in ITA No.1121/Bang/2014. The registry has pointed out that this appeal is barred by three days. The learned AR of the assessee has submitted that the impugned order of the CIT(A) was received by the assessee on 30/6/2014. However, the assessee presented this appeal on 01/09/2014 because prior to that, there were Saturday & Sunday on 30<sup>th</sup> and 31<sup>st</sup> August as well as holiday on 29<sup>th</sup>, August 2014. Therefore there is no delay in presenting the appeal. However, due to abundant pre-caution, assessee has also filed an affidavit explaining the delay and seeking condonation of delay.

3. On the other hand, learned Departmental Representative has not disputed the fact that 29<sup>th</sup> August 2014 was a declared holiday and the subsequent two days were Saturday and Sunday and therefore, the next working day was the 1<sup>st</sup> September, 2014. In view of the above facts and circumstances explained by the learned AR of the assessee we are satisfied that there is no delay in presenting the appeal. Therefore, the appeal is admitted for hearing.

4. The assessee has raised the following grounds:

1. The Orders of the Learned Authorities below in so far as it is against the Appellant are opposed to law, equity, weight of evidence, probabilities, facts and

circumstances of the case.

2. The order levying penalty u/s.271[1][c] of the Act, is bad in law in as much as, the learned A O has neither reached any satisfaction nor has such satisfaction been recorded in the assessment order and consequently, the very initiation of proceedings u/s.271[1][c] of the Act, is not in accordance with the requirements of Section 271[ 1 ] of the Act and consequently, the order of penalty founded on the invalid initiation of penalty proceedings is liable to be cancelled.
3. The order of penalty passed u/s 271[1][c] of the Act is bad in law as the notice issued under section 274 rws 271 of the Act is not discernable whether the penalty proceedings is initiated for furnishing of inaccurate particulars of income or concealment of income under the facts and in the circumstances of the appellant's case.
4. The impugned penalty order is illegal, without jurisdiction, is against the provisions and Law/Act and has been made in violation of principles of natural justice and equity.
5. The Learned Commissioner of Income Tax (Appeals) has grossly erred in stating that he has dismissed the quantum Appeal on merits also, although the said Appeal has been disposed off only on the technical ground of delay in filing of Appeal.
6. The Learned Assessing Officer erred in concluding that there is violation of provision of section 27 1(1)(c) and it is a fit case for levying of penalty under the captioned section.
7. The Learned Assessing Officer erred in levying concealment penalty on an income estimated on asset basis, which is an estimation only.
8. Your Appellant craves for leave to add, to delete from, or to amend the Grounds of Appeal.ö

5. At the outset, we note that the CIT(A) has dismissed the appeal of the assessee on the ground that the assessee has failed to show any reasonable and sufficient cause for delay in filing appeal before the CIT(A). Thus, the CIT(A) has dismissed the appeal of the assessee on the ground of delay of 230 days which he declined to condone.

6. Learned AR of the assessee has submitted that the assessee filed a petition for condonation of delay along with affidavit wherein the delay in filing appeal was explained by the assessee. He has filed a copy of the petition for condonation of delay before the CIT(A) and submitted that due to refusal of the earlier Chartered Accountant and Auditor of the assessee-firm, assessee was required to engage another Chartered Accountant to represent the assessee-firm. In the mean time, assessment order was passed in the month of July 2008 which was given to the new Chartered Accountant for the purpose of filing the appeal. However, after some time, said Chartered Accountant Mr. Ramanathan expressed his inability to take up the appeal work as he was not having any exposure. Therefore, as per his advise and suggestion, the assessee was to engage another professional for handling the appeal matter which took some time. Thus, the learned AR of the assessee has submitted that because of frequent change of representative and auditor, there was a delay in presenting the appeal before the CIT(A). This reason was duly explained before the CIT(A). However, the

CIT(A) refused to condone the delay by doubting the sufficiency of reason. He has relied upon the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs. Mst. Khatiji & Others* (167 ITR 471).

7. On the other hand, learned Departmental Representative has vehemently opposed the condonation of delay of 233 days before the CIT(A) and submitted that it was inordinate delay and the assessee failed to explain the sufficient cause of delay. The CIT(A) took note of the discrepancies in the condonation petition and the affidavit filed in support of the petition and therefore, the CIT(A) concluded that the assessee has failed to explain the delay. He has relied upon the order of the CIT(A).

8. We have considered the rival submissions as well as relevant material on record. It is always a question to be considered whether the explanation and the reasons for delay is a bona fide or is merely a device to cover ulterior purpose such as lapse on the part of the litigant or an attempt to save limitation in under-hand way. Thus it is to be seen whether the party has acted in mala fide or not and the reasons explained are factually correct or not. The Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs. Mst.Khatiji & Others* (supra) has observed that when substantial justice and technical considerations are pitted against each other, the cause of justice deserves to be preferred. It was also observed that every days delay must be explained does not mean that pedantic approach

should be made. The doctrine must be applied in a rational common sense pragmatic manner. There is no presumption that the delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. In fact he runs a serious risk. Thus, courts should be liberal in construing sufficient cause and lean in favour of such party. Justice oriented approach has to be taken by court while deciding the matter of condonation of delay. However, it does not mean that a litigant gets free license to approach court at its will. Once it is brought on record that the party has not acted in malafide and by filing the appeal belatedly, no ulterior purpose of the party is served then the matter should be decided on merits instead of thrown out at threshold on technical reasons. In the case in hand, assessee has explained the reason for delay in filing the appeal. We find the reasons explained by the assessee do not suggest any malafide or to achieve any ulterior purpose or motive. However, there is a laxity on the part of the assessee in engaging the new representative for presenting the appeal, therefore, the delay in filing appeal is not ordinary but inordinate delay. Accordingly, in the facts and circumstances of the case, we condone the delay of 233 days in filing appeal before the CIT(A) subject to the cost of Rs.1000/-.

9. Since the CIT(A) has not adjudicated the matter on merits, therefore, the matter is set aside to the record of the CIT(A) for deciding the appeal in quantum on merits.

10. Penalty appeal in ITA No.1122/Bang/2014 is consequential to the quantum appeal. Since we have set aside the matter in quantum appeal to the record of the CIT(A), accordingly, appeal arising from penalty u/s 271(1)(c) is also set aside to the record of the CIT(A) for deciding the same after deciding the quantum appeal on merits.

11. In the result, both the appeals are allowed for statistical purposes.

*Pronounced in the open court on 12<sup>th</sup> February, 2016.*

sd/-  
**(Abraham P George)**  
**ACCOUNTANT MEMBER**

sd/-  
**(Vijay Pal Rao)**  
**JUDICIAL MEMBER**

*eksrinivasulu*

Copy to:

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore