

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA Nos.670 to 672/Bang/2016
(Assessment years: 2009-10 to 2011-12)

Shri S.Muthaiah,
No.762/13, Dhatri, I Stage, 2nd cross,
Opp. St.Johns High School,
Shivakumar Swamy Badavane,
Davangere-577005. ... Appellant
PAN: BEXPS 3420 N

Vs.

Deputy Commissioner of Income-tax,
Central Circle 1(3),
Bangalore. ... Respondent

Appellant by : Shri V.Srinivasan, Advocate.
Respondent by : Shri Tshering Ongda, JCIT(DR).

Date of hearing : 27/09/2016
Date of pronouncement : 30/09/2016

O R D E R

Per INTURI RAMA RAO, AM :

These are appeals filed by the assessee against common order of the learned Commissioner of Income-tax(Appeals)-11, [CIT(A)], Bangalore, dated 12/02/2016, for the assessment years 2009-10 to 2011-12.

2. The assessee raised the following grounds of appeal:

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1. The orders of the 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 learned CIT[A] is not justified in dismissing the appeal in limine observing that the appellant had not sought for condonation of the delay of **125 days** in filing the appeal before the learned CIT[A] under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the appellant was in judicial custody during the course of assessment proceedings and even after the completion of assessment proceedings, the appellant remained in the judicial custody and consequently, the appellant was unable to contact any authorized representatives to prepare and file the appeal within time allowed and therefore, the delay in filing the appeal was due to reasonable cause and the learned CIT[A] ought to have condoned the delay in filing the appeal and admitted the appeal and disposed it on merits.

3. Without prejudice to the above, the learned CIT [A] is not justified in disposing off the appeal ex-parte under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] failed to appreciate that the appellant was in judicial custody earlier and the Criminal Court proceedings before the CBI Court was being conducted at the time of the appellate proceedings and consequently, the appellant was prevented with sufficient and reasonable cause for not entering into appearance and the non-appearance was not on account of willful and deliberate act of the appellant and therefore, the impugned order passed by the learned CIT[A] deserves to be vacated.

4. Without prejudice to the above the authorities below is not justified in adding a sum of Rs.23,00,000/- to the returned income under the facts and in the circumstances of the appellant's case deserves to be cancelled.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

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6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. Briefly facts of the case are that the search and seizure operations u/s 132 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] were conducted in the premises of the assessee on 25/10/2010 as a result of which certain incriminating material was found. Consequently, notice u/s 153A was issued and the assessment was completed u/s 143(3) r.w.s.153A of the Act on 26/3/2013.

4. Being aggrieved, appeals were preferred before the CIT(A) who vide impugned order, had dismissed the appeals for non-prosecution as well as for delay for condonation in filing of the appeal.

5. Being aggrieved, assessee is before us in the present appeals. It was argued that the assessee could not appear before the CIT(A) due to the fact that he was in judicial custody on a criminal proceedings implicating him in a criminal offence. It was submitted that this is sufficient reasonable cause for not causing appearance before the CIT(A). In the light of this, it is submitted that the matters may be restored back to the file of the CIT(A) for fresh adjudication in accordance with law.

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The learned Departmental Representative has no objection for this proposition.

6. After hearing rival submissions, we are of the considered opinion that the CIT(A) had passed an ex-parte order for non-prosecution of the appeal. However, we are satisfied that the assessee was prevented by sufficient and reasonable cause for not causing appearance before the CIT(A) as he was in judicial custody in a criminal proceedings against him. Therefore, we remand the matters back to the file of the CIT(A) for fresh disposal in accordance with law.

7. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 30th September, 2016

sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place : Bangalore
D a t e d : 30/09/2016

srinivasulu, sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore