

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER  
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.1638/Bang/2013
Assessment year : 2006-07

M/s. Hubli Electricity Supply Co., Navanagar, P.B. Road, Hubli. <b>PAN: AABCH 3176J</b>	Vs.	The Commissioner of Income Tax, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Shri V.K. Gurunathan, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)

Date of hearing	:	03.08.2016
Date of Pronouncement	:	12.08.2016

**ORDER**

*Per Sunil Kumar Yadav, Judicial Member*

This appeal is preferred by the assessee against the order passed u/s. 263 of the Income-tax Act, 1961 [“the Act”] by the Commissioner of Income-tax, Hubli [“CIT”] dated 24.03.2011 *inter alia* on the following grounds:-

“1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax wrongly surmised that the assessment order passed u/s. 143(3) by AO is erroneous and

prejudicial to the interest of the revenue, thereby invoking the provision of section 263 of the Act is bad in law and not sustainable.

2. On the facts and circumstances of the case, the condition precedent for invoking section 263 of the Act being absent, the proceedings initiated under the said section was opposed to law and order passed u/s.263 is liable to be cancelled.

3. The learned Commissioner of Income-tax ought to have appreciated that the total investment in plant and machinery is substantial more than 50% of the value of machinery as on 1.4.2004 and thus the company having satisfied the condition laid down in the Explanation to the section, he ought not to have directed the AO to withdraw the benefit claimed u/s.80-IA(4)(iv)(c) of the Act.

4. The learned Commissioner of Income-tax ought to have appreciated that even though the appellant had bifurcated a portion of its income as miscellaneous income, the same could not be treated as income from non-business activity and hence the benefit u/s.80-IA(4) of the Act ought not to have been denied.

5. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.”

2. During the course of hearing, our attention was invited to the fact that this appeal is filed late by 913 days. The assessee filed application for condonation of delay stating therein that the order of the appellate authority was served on 30.3.2011 and the appeal was required to be filed before the Tribunal on or before 28.5.2011, but unfortunately it could not be filed as the then representative of the assessee was of the opinion that the assessment order for AY 2006-07 having been set aside by the Id. CIT, the appellant has to await for a fresh order of the assessing authority, before

further course of action is taken. He accordingly suggested no appeal against the order of CIT u/s. 263 of the Act, since the CIT has only set aside the assessment originally made u/s. 143(3) of the Act on 31.3.2008.

3. Accordingly when the consequential order was passed by the AO, an appeal was filed before the CIT(Appeals) against the said consequential order. The said appeal was heard and the CIT(Appeals) has passed an order on 29.1.2003 which was served on the assessee on 19.2.2003. Then the assessee realised that an appeal should have been filed against the order passed by the CIT u/s. 263 before the Tribunal and then the assessee has filed the present appeal. Therefore the delay in filing the appeal is *bonafide* and may kindly be condoned.

4. The Id. DR strongly opposed the request for condonation of delay by contending that the assessee has been assisted by professionals, therefore it cannot be said that he was ignorant about the consequences and his rights. Since the delay in filing of the appeal is not properly explained, the application for condonation of delay may kindly be rejected.

5. Having carefully examined the application for condonation of delay and the facts of the case, we find that the assessee has been assisted by a professional even before the proceedings undertaken by the CIT u/s. 263 of the Act and also in the consequential assessment proceedings. Therefore, it cannot be said that the assessee was not aware about the consequences of the order and his rights. In the light of these facts, we

find no merit in the contention of the assessee that he was under an impression that appeal should not be filed against the order of CIT passed u/s. 263 of the Act till the consequential order is passed. In the instant case, not only the consequential order, the first appellate authority has also disposed of the appeal filed against the consequential order. Therefore, we are of the view that there is no reasonable cause for the delay in filing the appeal. It was merely a story concocted by the assessee to explain the delay in which we do not find any force. We accordingly reject the contention of the assessee and dismiss the application for condonation of delay. Accordingly, we hold that the appeal is barred by limitation and we dismiss the same. Since the appeal is dismissed being barred by limitation and the appeal is not admitted, we find no justification to deal with the appeal on merits.

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

Pronounced in the open court on this 12<sup>th</sup> day of August, 2016.

Sd/-

( A.K. GARODIA )  
Accountant Member

Sd/-

(SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> August, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.