

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.82 & 83/Bang/2017
(Asst. Year – 2009-10 & 2010-11)

The Finance Officer,
Kuvempu University,
Shankaraghatta,
Shimoga District.

. Appellant.

Vs.

Income Tax Officer,
TDS Ward, Davangere.

. Respondent.

Appellant by : Shri Narendra Sharma, Advocate
Revenue by : Smt. Padmameenakshi, JCIT

Date of Hearing : 25-9-2017
Date of Pronouncement : -9-2017

ORDER

PER SHRI JASON P BOAZ, ACCOUNTANT MEMBER :

These appeals by the assessee are directed against orders of Commissioner of Income-tax (Appeal), Kalaburgi dated 31/10/2016 for asst. years 2009-10 and 2010-11.

2. Briefly stated, the facts relevant for disposal of this appeal are as under:-

2.1 The assessee is a public state university, offering under graduate & graduate degree programmes. The Assessing Officer

(‘AO’) carried out spot verification at the assessee’s premises in order to verify the applicability of TDS provisions and compliance thereon. On examination and verification, it was found that the assessee had made payments towards legal charges to Advocates without deducting tax at source thereon. The AO accordingly initiated proceedings u/s 201(1) and 201(1A) of the Income-tax Act, 1961 (in short ‘the Act’) and held the assessee to be an assessee in default to the extent of tax deduction vide separate orders dated 13/6/2011 for both asst. years 2009-10 and 2010-11.

2.2 Aggrieved by the orders passed by the AO u/s 201(1) and 201(1A) of the Act dated 13/6/2011 for asst. years 2009-10 and 2010-11, the assessee preferred appeals before the CIT(A), Kalaburgi. Since the appeals were filed belatedly by 235 days, the assessee sought condonation of the said delay. The assessee submitted that the causes of delay, inter alia, was for various administrative reasons as well as not having the PAN which was applied for subsequent to the orders passed by the AO. The assessee’s explanations for delay in filing the appeals did not find favour with the Id CIT(A) and the Id CIT(A) accordingly dismissed the assessee’s appeals in limine, as being barred by limitation vide the impugned orders dated 31/10/2016.

3. Aggrieved by the orders of the CIT(A), Kalaburgi dated 31/10/2016 for asst. year 2009-10 and 2010-11, the assessee has raised somewhat similar grounds. The grounds raised for asst. year 2009-10 are reproduced hereunder:-

1. *The orders of the authorities below in so far as they are 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 refusing to condone the delay of 235 days in filing the appeal on the ground that the reasons explained by the appellant does not amount to sufficient cause under the facts and in the circumstances of the appellant's case.*
 - 2.1 *The learned CIT[A] failed to appreciate that the delay in filing the appeal was due to reasonable cause and that, the delay in filing the appeal was not intentional, willful or deliberate and therefore, he ought to have condoned the delay in filing the appeal and admitted the appeal and disposed off the same on merits under the facts and in the circumstances of the appellant's case.*
3. *Without prejudice to the above, the authorities below failed to appreciate that the total payment of Rs. 1,94,557/- consists of payments made to eight advocates and out of which payment made to three advocates were less than Rs.20,000 per payee and hence these payment were not covered by the provisions of Section 194J of the Act and the appellant was not liable to deduct any tax at source.*

4. *The authorities below have erred by overlooking the fact that the payment made to one advocate Sri K.Basappa Gowda, though exceeded Rs.20,000/-, he is an assessee under the income tax Act and has filed the return of income in relation to the assessment year 2011-12.*

5. *The authorities below have completely overlooked the explanation to section 191 of the Act, which states that "The payer shall be deemed to be in default only if the tax is not paid by the payee direct".*

6. *The appellant denies itself liable to be charged to interest u/s. 201[1A] of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

6.1 *The authorities below erred in levying interest u/s.201[1A] of the I.T Act when the payee has paid advance-tax and self-assessment tax and when there was no loss of revenue [CIT Vs. Rishikesh Apartment Co-operative Housing Ltd. [2001] 119 Taxman 239 (Guj)].*

7. *The authorities below completely overlooked the fact that the surcharge @ 10% is leviable in the case of individual, 10% subject to deduction for Rs.10,00,000/- and in case of firm and domestic company, subject to deduction of Rs.1,00,00,000/- and therefore, the learned A.O. erred in calculating the*

TDS @ 2.26% on the entire amount of Rs.18,70,87,523/- under the facts and in the circumstances of the appellant's case.

8. 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.

Grounds No.2 & 2.1 – Condonation of delay of 235 days in filing appeal before CIT(A)

4. According to the Id AR for the assessee, the assessee is a public state university and was not having any PAN prior to the orders dated 13/6/2011 passed by the AO for asst. years 2009-10 and 2010-11. It is only on 28/12/2011 that the assessee applied for PAN. Before us, the Id AR reiterated the submissions put forth before the Id CIT(A) at paras 6 of the impugned orders. It was submitted that after the AO passed the orders u/s 201(1) and 201(1A) of the Act, the assessee sought the approval of the Syndicate to seek legal remedial action by filing appeals and appointing a legal counsel for advice in the matter. It was only in month of Nov, 2011, after going through the papers, that the tax advisers have given their opinion for filing the appeals against the orders u/s 201(1) and 201(1A) of the Act. Thereafter, taking necessary administrative approval and approval of the finance

department, the assessee proceeded to complete formalities to file these appeals. The assessee, however, was informed by Bankers that payment of appeal fees cannot be accepted by them in the absence of the assessee having PAN , which was applied for on 28/12/2011. It was submitted by the ld AR that the above procedure resulted in the aforesaid delay of 235 days in filing these appeals for asst. year 2009-10 and 2010-11 before the CIT(A). It was pleaded that said delay was neither intentional nor deliberate, but was due to reasons beyond the control of the assessee. It was contended that the ld CIT(A) rejected the assessee's petition for condonation of delay without considering the assessee's explanation that it had sufficient cause for filing the appeals belatedly. In support of the assessee's submissions, the ld AR placed reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. ISRO Satellite Centre (218 Taxmann 74) (Kar) wherein the Hon'ble High Court upheld the order of the ITAT condoning the delay of 5 years. The ld AR also relied on the decision of the co-ordinate bench of this Tribunal in the assessee's own case for asst. years 2007-08, 2008-09 and 2011-12 in ITA No.1287 to 1289/Bang/2016 dated 31/8/2017 wherein the co-ordinate bench has condoned the similar delay of 235 days in filing the appeals for those years before the CIT(A).

5. Per contra, the ld DR for Revenue vehemently opposed the assessee's plea for condonation of delay of 235 days in filing the appeals for asst. year 2009-10 and 2010-11 before the ld CIT(A) as the assessee has failed to explain and establish reasonable cause or

sufficient cause for the said delay in filing the appeals. Strong reliance was placed on the impugned orders of the Id CIT(A).

6.1 We have considered the rival submissions and carefully perused the material on record; including the judicial pronouncements cited. We find that in identical factual situation in the assessee's own case for asst. year 2007-08, 2008-09 and 2011-12, where there was identical delay of 235 days on the part of the assessee in filing the appeals for those years before the Id CIT(A), the co-ordinate bench in its orders in ITA No.1287 to 1289/Bang/2016 dated 31/8/2017 has condoned the delay of 235 days in filing the appeals before the CIT(A) and set aside the matter to the file of the CIT(A) for adjudication of the appeals on merits. At para 6 of its order (Supra), the co-ordinate bench held as under:-

“6. We have considered the rival submissions and relevant material on record. The assessee has given the explanation of cause of delay which has been reproduced by the CIT (Appeals) in the impugned order. The CIT (Appeals) was not satisfied with the explanation however neither the CIT (Appeals) nor the department has controverted the facts as explained by the assessee for cause of delay in filing the appeals before the CIT (Appeals). Undisputedly, the assessee is a public state university offering undergraduate, graduate and post graduate degree programmes. There

is administrative hierarchy managing the affairs of the assessee-university. Therefore for taking any decision, as not in the case of individual, there is a process for approvals from the appropriate authorities in the administration. This is not a case arising from regular assessment but the Assessing Officer has passed the order under Section 201(1) & 201(1A) of the Act holding the assessee as assessee in default due to non-deduction of tax in respect of certain payments made by the assessee towards legal fees. The assessee has contended before the CIT (Appeals) that recipient of the fees has offered the same to tax and therefore the assessee cannot be held as assessee in default. The CIT (Appeals) without going into the merit of the case dismissed the appeal of the assessee in limine by declining the condonation of delay of 235 days. It is settled proposition of law that while construing the sufficient cause the Court should be liberal and lean in favour of such party if it is brought on record that the parties has not acted in any mala fide but the reasons explained are factually correct. It is always a question whether the explanation and reason for delay was bona fide or merely a device to cover the ulterior purpose or an attempt to save the limitation in an under hand way. In the case of the assessee the facts explained by the assessee being the reasons for delay have not been

disputed by the department however the CIT (Appeals) found the same as not sufficient to satisfy him for condoning the delay. Therefore it is manifest from the record that the assessee has not acted in mala fide and the reasons explained are factually correct. Further by filing the appeals belatedly the assessee is not going to achieve any ulterior purpose or motive or other benefit when it was explained by the assessee that the recipient of the amount in question has offered the same for tax. The Hon'ble Supreme Court has laid down the principle that whenever substantial justice and technical considerations are opposed to each other the cause of substantial justice has to be preferred. Thus it appears to be a case of facing the litigation first time due to the order passed under Section 201(1) & 201(1A) of the Act. Therefore in view of the facts and circumstances of the case we are satisfied that the assessee has explained sufficient cause for delay in 235 days in filing the appeal before the CIT (Appeals). Accordingly, we condone the delay in filing the appeal before the CIT (Appeals) and set aside the matter to the record of the CIT (Appeals) for adjudication of the appeals on merits.”

6.2 Following the decision of the co-ordinate bench of this Tribunal in ITA Nos.1287 to 1289/Bang/2017 dated 31/8/2017 in

the assessee's own case for asst. years 2007-08, 2008-09 and 2011-12 (Supra), which are rendered on identical factual matrix as in the asst. years 2009-10 and 2010-11 before us, we are satisfied that the assessee has explained sufficient cause for delay of 235 days in filing the appeals before the CIT(A) and accordingly set aside the matter to the file of the CIT(A) for adjudication of the appeals on merits.

7. Consequently, the other grounds 3 to 8 raised by assessee on merits are not being adjudicated by us in this order.

8. In the result, the assessee's appeals for asst. year 2009-10 and 2010-11 are allowed for statistical purposes.

Order pronounced in the open court on 27th **September, 2017.**

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Bangalore
Dated : 27/9/2017
Vms

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Copy to : 1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5 .DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.