

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.501/Bang/2017
(Assessment Year : 2012-13)

M/s. Metric Stream Infotech (India) Pvt. Ltd.,
AMR Tech Park – 4B, Nos.23 & 24, Hongasandra Vill.,
Begur Hobli, Bangalore-560 068.

.... Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 12(1), Bangalore.

..... Respondent.

Appellant By : Shri Padamchand Khincha, C.A.
Respondent By : Smt. Padma Meenakshi, JCIT (D.R)

Date of Hearing : 10.10.2017.
Date of Pronouncement : 25.10.2017.

O R D E R

Per Shri N.V. Vasudevan, J.M. :

This is an appeal by the assessee against the order dt.29.08.2016 of Commissioner of Income Tax (Appeals)-4, Bangalore confirming the order of the Assessing Officer imposed penalty on the assessee under

Section 271F of the Income Tax Act, 1961 (in short 'the Act') for the Assessment Year 2012-13.

2. The assessee is a company engaged in the business of software development sales and marketing services. For the Assessment Year 2012-13, the due date for filing the return of income under Section 139(1) of the Act in the case of the assessee was 30.11.2012. The assessee filed return of income only on 28.5.2013. Under the provisions of Section 271F of the Act, if a person required to furnish return of income under Section 139(1) of the Act fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct such person shall pay, by way of penalty of a sum of Rs.5,000. In the present case, the date of end of the relevant AY date was 31.3.2013 for the relevant assessment year under consideration. We have already noted that the return of income was filed only on 28.5.2013. The Assessing Officer therefore initiated penalty proceedings under Section 271F of the Act for the assessee's failure to file the return of income on or before the end of the relevant assessment year. Section 273B of the Act provide no penalty under Section 271F shall be imposed on an

assessee for failure referred to in Section 271F of the Act, if the assessee proves that there was a reasonable cause for the said failure.

3. A show cause notice dt.22.7.2014 under Section 271F of the Act was issued by the Assessing Officer. The assessee did not respond to the show cause notice. The Assessing Officer therefore proceeded to impose penalty under Section 271F of the Act of Rs.5,000. The Assessing Officer observed that the provisions of Section 271F of the Act was introduced only by way of a measure to ensure timely filing of return by tax payer and also to enable the Assessing Officer to carryout investigation and collect information to verify the return of income within the period of limitation for completion of assessment prescribed under the Act. The Assessing Officer accordingly imposed a penalty of Rs.5,000 on the assessee.

3. Before the CIT (Appeals) the assessee pointed out that the Authorised Representative of the assessee appeared before the Assessing Officer in response to the show cause notice under Section 271F of the Act and explained the reasons for the delay in filing the return within the period contemplated under Section 271F of the Act.

The assessee explained before the CIT (Appeals) that it was a captive service provider to its holding company M/s. Matric Stream Inc. USA and was dependent on its holding company to meet its day to day operating expenses. The assessee also pointed out that the tax liability on the total income returned by the assessee in the return of income was Rs.3,12,29,954. The assessee did not have sufficient funds to make the payment of tax on the income admitted in the return of income. The assessee pointed out that without payment of tax due on the returned income, the returns filed by the assessee will not be accepted. The assessee therefore had no option but to wait for release of funds from its holding company and hence there was a delay in filing the return of income. The assessee therefore explained that there was a reasonable cause for the delay in filing the return of income.

4. The CIT (Appeals) however did not accept the plea of the assessee. He held that the reasons for the delay as explained by the assessee does not constitute a justifiable reason for the delay in filing the return of income. The CIT (Appeals) confirmed the order of the Assessing Officer imposing penalty under Section 271F of the Act.

5. Aggrieved by the order of the CIT (Appeals) the assessee has preferred an appeal before the Tribunal.

6. Originally this appeal was filed on 1.3.2017 along with appeal memo in Form No.36, grounds of appeal and other documents which were signed by authorized signatory of the assessee. The appeal so filed was well within the time. Later on it was noticed by the assessee that Form 36, grounds of appeal and other documents have to be signed by the Director of the company. Accordingly, the revised Form No.36, grounds of appeal and other documents were filed duly signed by the Director of the Company. Registry has not raised any objection in this regard that there is a delay in filing the appeal. The assessee, however, on its own has filed petition for condonation of delay, in the event the revised Form No.36, Memor of grounds etc., filed on 1.3.2017 is treated as not proper and the time of filing the appeal is to be reckoned only from the date on which Form 36, grounds of appeal and other documents signed by the Director is considered as the date of filing of the appeal. There will be a delay of 130 days in filing the appeal if it is construed that Form 36, grounds of appeal and other documents signed by the Director of the

Company alone is considered as proper filing of the appeal. It has been explained in the petition of condonation of delay that the Directors controlling the affairs of the assessee was outside India and therefore they could not sign the same. It has also been submitted that there was no deliberate or intentional reason for the defective filing of the appeal, if any.

6. Though the learned Departmental Representative has prayed and submitted that the delay if any should not be condoned, We are of the view that the question of delay is only a technical as the assessee has filed the appeal within the time on 1.3.2017 though the same was defective. Accordingly, we hold that the appeal filed is within the time and in any event there was a reasonable cause for the delay in filing the appeal.

7. As far as the merits of the appeal filed by the assessee is concerned, the question that needs to be determined by the Tribunal is as to whether there was a reasonable cause for the delay in filing the return of income for the Assessment Year 2012-13 by the assessee beyond the end of the Assessment Year 2012-13 i.e. on or before 31.3.2013. In this

regard, the first aspect we notice is that the return of income was filed by the assessee on 28.5.2013 and the delay in terms of Section 271F of the Act is only one month 28 days. Apart from the above, the reasons for the delay being non-availability of funds to pay the tax due on the income declared in the return of income is the reason pleaded by the assessee for filing the return of income. In this regard, the learned counsel for the assessee has drawn our attention to a decision of the Hon'ble Kerala High Court in the case of M. Rajan Vs. Prin. CIT (2016) 76 Taxmann.com 164 (Ker) wherein the Hon'ble Kerala High Court in the context of condoning the delay in filing the return of income under Section 119(2)(b) of the Act took view that severe financial crisis would be reasonable cause for condoning the delay. The learned counsel for the assessee also drawn our attention to the decision of Hon'ble Madras High Court in the case of S. Jayanti Vs. ACIT 2015 75 Taxmann.com 248 wherein in the context of penalty under Section 271F of the Act, non-furnishing of the seized documents was held to be reasonable cause for the delay in filing the return of income. The learned counsel for the assessee also pointed out that though the assessee submitted financial hardship as a cause for the

delay in filing the return of income, the necessary evidence and documents were not filed. The learned counsel for the assessee filed an application for admission of the following additional evidences under Rule 29 of the IT (AT) Rules, 1963 :

INDEX OF ADDITIONAL EVIDENCE

Sl. No	Particulars	Page No
1	Copy of the Audited financial statements of M/s MetricStream Inc. USA for the year ended 31.3.2013 and 31.3.2012.	30-79
2	Copy of the Audited financial statements of the appellant Company for the year ended 31.3.2012	80-101
3	Copy of the Audited financial statements of the appellant company for the year ended 31.3.2013	102-125
4	Copy of the bank statements of the appellant company	126-683
5	Copy of the email communications with CITI Bank for efforts made to borrow credit facility	684-685
6	Extract of auditor's report evidencing payment of all other statutory payments within due dates	686-721

The learned Departmental Representative has submitted that the additional evidence, if admitted, requires to be scrutinized by the AO and in that event the AO should be afforded an opportunity to rebut the plea of the assessee in the light of the additional evidence.

8. We have considered the rival submissions and are of the view that the additional evidence now sought to be filed by the assessee before

the Tribunal are necessary and required proper adjudication of the issues involved in the appeal. These evidence, according to the assessee, show that the assessee was dependent on its holding company for day to day affairs and for financial support including payment of self-assessment tax. The additional evidence is therefore admitted for consideration.

9. Since the revenue authorities did not have an opportunity to examine the additional evidence now admitted by the Tribunal, we deem it proper to set aside the order of the CIT (Appeals) and remand the question of the existence of reasonable cause under Section 273B of the Act for fresh consideration by the Assessing Officer in the light of the additional evidence now admitted by the Tribunal. The Assessing Officer shall afford an opportunity of being heard to the assessee before deciding the issue.

10. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on the 25th day of Oct., 2017.

Sd/-

(JASON P BOAZ)

Accountant Member

Bangalore, Dt. 25.10.2017.

*Reddy gp

Sd/-

(N.V. VASUDEVAN)

Judicial Member