

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

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

I.T. A. No.1928/Bang/2017
(Assessment Year : 2012-13)

Shri W.S. Basheer,
Prop. Wawanna Hardware,
279, 27th Cross, 3rd Block,
Jayanagar, Bangalore-560 011.
PAN AAGPW 9544B

... Appellant.

Vs.

Income Tax Officer,
Ward 7(2)(4), Bangalore.

..... Respondent.

Appellant By : Shri Sandeep, C A

Respondent By : Shri B.R. Ramesh, JCIT (D.R)

Date of Hearing : 28.11.2017.

Date of Pronouncement : 6.12.2017.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-7, Bangalore dt.11.8.2017 for the Assessment Year 2012-13.

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

2.1 The assessee, Prop. Wawanna Hardware, engaged in business as a dealer in hardware, paints, etc. filed the return of income for Assessment Year 2012-13 on 20.11.2012 declaring total income of Rs.1,16,610, which also included income under the head 'Income from House Property'. The case was taken up for scrutiny and the assessment was concluded under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.27.3.2015 wherein the assessee's income was determined at Rs.53,69,822 in view of the following additions / disallowances to the returned income of Rs.1,16,610 :-

i)	Income tax penalty	Rs.1,47,016
ii)	Adhoc disallowance of 25% of sundry creditors balances.	Rs.4,62,729
iii)	Unsecured loans.	Rs.44,01,000
iv)	Adhoc disallowance of 25% of expenses claimed	Rs.2,42,466

2.2 Aggrieved by the order of assessment dt.27.3.2015 for Assessment Year 2012-13, the assessee preferred an appeal before the CIT (Appeals) which was filed belatedly by 229 days. The learned CIT (Appeals) dismissed assessee's appeal, in limine, by not condoning the delay in filing the appeal and without adjudicating the grounds raised by the assessee ;on merits on the various additions / disallowances made by the Assessing Officer in the order of assessment for Asst. Year 2012-13.

3. The assessee, being aggrieved by order of the CIT (Appeals) dt.11.8.2017 for Assessment Year 2012-13, has filed this appeal before the Tribunal, raising the following grounds :-

1. That the order of the learned Commissioner of Income Tax Appeals, in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax Appeals erred in law and on facts in not condoning the delay for filing the appeal even though there is a sufficient and reasonable cause for such delay.
3. That the learned Commissioner of Income Tax Appeals ought to have condoned the delay keeping in the mind that the delay has not occurred due to the mistake of Appellant.
4. That the learned lower authorities erred in law and on facts in making addition of 25% of sundry creditors on ad-hoc basis.
5. That the learned lower authorities erred in law and on facts in disallowing 25% of total expenditure debited to Profit and loss account on ad-hoc basis.
6. That the learned lower authorities erred in law and on facts in adding the unsecured loans on the ground that PAN is not mentioned in the confirmation letters.

4. **Ground No.2 - CONDONATION OF DELAY IN FILING APPEAL**
BEFORE THE CIT (APPEALS).

4.1 At the outset, the learned Authorised Representative for the assessee urged Ground No.2 assailing the impugned order of the learned CIT (Appeals), wherein the assessee's appeal was dismissed in limine by not condoning the delay of 229 days in filing the appeal before the CIT (Appeals), inspite of there being sufficient and reasonable cause for such delay. According to the learned Authorised Representative, the assessee filed a petition dt.17.12.2015 requesting for condonation of delay accompanied by an Affidavit dt.5.12.2015 sworn to by the CA of the

assessee. In the petition, it was submitted that the aforesaid delay of 229 days was due to mistake of the assessee's CA; who by the aforesaid Affidavit admitted that the said delay / default was due to him alone and not to the assessee. According to the learned Authorised Representative, the assessee has not filed the appeal belatedly before the CIT (Appeals) willfully or with mala fide intention as that would jeopardize his own case, which no normal person would do; more so, when the assessment order resulted in such huge adhoc additions resulting in the raising of demand of Rs.20,33,580 as against returned income of Rs.1,16,610. The learned Authorised Representative contends that in the facts and circumstances of the case as narrated above, it cannot be said that there was any mala fide intention on the part of the assessee not to file the appeal on time. It is submitted that it is settled position that legitimate taxes alone should be collected. Therefore, if the assessee's delay in filing the appeal is not condoned, the assessee would be put to great financial difficulty and hardship, whereas if the delay is condoned and the appeal is heard on merits there will be no loss to revenue as legitimate taxes due only will be collected. It was prayed by the learned Authorised Representative that in the facts and circumstances of the case and in the interest of justice, the delay of 229 days in filing the appeal before the learned CIT (Appeals) be condoned and the learned CIT (Appeals) be directed to hear and dispose off the assessee's appeal on merits. In support of the assessee's case, reliance was placed on the decision of the Hon'ble Apex Court in the case of MST.

Katiji & Others (1987) 167 ITR 471 (SC) wherein the principles for dealing with matters for condonation of delay have been laid down.

4.2 Per contra, the learned Departmental Representative for Revenue opposed the assessee's grounds for condonation of delay. He supported the impugned order, stating that the learned CIT (Appeals) had rightly declined condonation of delay of 229 days for lack of sufficient cause for the assessee's default.

4.3.1 We have heard the rival contentions and perused and carefully considered the material on record. We find that while the reasons put forth by the assessee for the delay of 229 days in filing the appeal before the Id CIT(A) find mention in the impugned order, the Id CIT(A) has rejected the assessee's explanations for the said delay basically on grounds of lack of sufficient cause. It appears to us, from a careful perusal of the assessee's submissions in respect of the delay in filing the appeal before the CIT(A), that the assessee was not aware of the subsequent failure to take required legal action in filing the appeal in time by the C A Sri P. Shivaprasad after receipt of the adverse order of assessment u/s 143(3) of the Act for asst. year 2012-13 and handing it over to the CA who has owned up his mistake in the Affidavit. It does not stand to reason that any man would intentionally jeopardize his own case by deliberately filing the appeal belatedly; more so when his income was determined at Rs.53,69,822/-, almost 50 times more than his returned income of Rs.1,16,610/-, resulting in tax demand of Rs.20,35,580/- being raised on account of adhoc and non-speaking additions / disallowances made by the Assessing Officer in the order of

assessment for Assessment Year 2012-13. Further, as seen from the order of assessment and as contended by the assessee, the additions/disallowances made by the AO are basically factual in nature and need to be examined and verified. We also notice that the order of assessment clearly evidences that the issues on which additions/disallowances have been made, have neither been discussed nor has any reasoned finding/speaking order been rendered by the AO on any issue in the order of assessment. On appeal also, the Id CIT(A) without going into and examining the merits of the various grounds raised by the assessee on the aforesaid disallowances/additions has dismissed the assessee's appeal in limine by declining to condone the delay in filing the appeal.

4.3.2 The Hon'ble Apex Court in the case of MST. Katiji and Others (Supra) has laid down the principles for examining petitions for condonation of delay in filing appeals, i.e, that substantial justice should prevail over technical considerations. It is settled position that while considering 'sufficient cause' the court should take a liberal view in the interest of substantial justice, especially where it is found that the parties have not acted with malafide intentions and the reasons/explanations put forth are satisfactory. In the case on hand, the factual explanation put forth by the assessee as the reasons for delay in filing the appeal have not been controverted before us by Revenue, though the Id CIT(A) did not find that same sufficient enough to condone the delay. In our view, after a careful perusal of the explanations put forth for delay in filing the appeal, we find that the assessee's default is neither intentional

nor malafide, as by filing the appeal belatedly the assessee did not stand to benefit and moreover the default has happened admittedly due to the mistake of his C A. In the factual and legal matrix of the case, we are of the considered opinion that the assessee's explanation put forth establishes sufficient cause for the delay of 229 days in filing the appeal before the CIT(A).

4.3.3 As mentioned and discussed at para 4.3.2 (Supra), the Hon'ble Apex Court in the case of MST. Katiji & Others (Supra), has explained and laid down the principles to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Hon'ble Court explained that every days delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational, common sense and pragmatic matter. Keeping in mind the aforesaid principles laid down by the Hon'ble Apex Court; the fact that a litigant does not stand to benefit by lodging the appeal late and also the fact that the condonation of the delay and directing that the appeal be adjudicated on merits would cause no loss to Revenue as legitimate taxes payable in accordance with law alone will be collected, we find that this is a fit case for condonation of delay of 229 days in filing the appeal before the Id CIT(A) and do so. We accordingly set aside the impugned order of the Id CIT(A) and restore the matter to the file of the Id CIT(A) for consideration and adjudication on merits of the grounds raised by the assessee. Needless to add, the Id CIT(A) will afford the assessee and the AO adequate opportunity of being

heard on all issues raised by the assessee in the appeal before him before adjudicating thereon in accordance with law. We hold and direct accordingly. Consequently, ground No.2 of assessee's appeal is allowed.

5. In view of our order setting aside the impugned order of the Id CIT(A) and restoring the assessee's appeal before the Id CIT(A) for adjudication on merits, we decline to adjudicate on the grounds raised by the assessee at S.Nos.1 and 3 to 6 (supra) on various issues on merits as the same have not been considered by the authorities below.

6. In the result, the assessee's appeal for asst. year 2012-13 is partly allowed for statistical purposes as indicated above.

Order pronounced in the open court on 6th Dec., 2017.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore,
Dt.6.12.2017.

*Reddy gp

Copy to :

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

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.