

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1864/Bang/2017
Assessment year : 2008-09

Shri T D Ravikumar, C/o. M/s. Kamath & Kamath, Advocates, 5 th Floor, Chitrapur Bhavan, 8 th Main Road, Malleswaram, Bangalore – 560 055. PAN: AFHPR 8943R	Vs.	The Income Tax Officer, Ward 2, Shivamogga.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Rachana, Advocate
Respondent by	:	Shri Vikas Suryawanshi, Advocate

Date of hearing	:	15.11.2017
Date of Pronouncement	:	15.12.2017

ORDER

This appeal is preferred by the assessee against the order of the
CIT(Appeals) *inter alia* on the following grounds:

“(6) The impugned order dated 22.05.2017 passed by the Commissioner of Income Tax (Appeals), Davanagere in Proceedings No. ITA No. CIT (A) 375 / HBL / DVG / 2010-11 dismissing the appeal petition filed against the order dated 31.12.2010 passed by the Income Tax Officer, Ward-2, Shimoga for the year 2008-09 under the provisions of section 143 (3) of the Income Tax Act 1961 is not only illegal, improper, unjust and highly violative of the principles of natural justice.

(7) The learned First Appellate Authority seriously erred in summarily dismissing the appeal petition for want of prosecution of the case and has failed to apply his mind to the facts already

urged by the appellant which was already available in the records and no additional documents need to have been produced to support the grounds urged before the First Appellate Authority and as such even in the absence of physical presence of the appellant or his representative, the First Appellate Authority ought to have disposed of the appeal petition on merits instead of summarily dismissing the same for want of prosecution. By doing so the learned First Appellate Authority has shirked his responsibility in adjudicating the appeal petition judiciously.

(8) Both the lower authorities have seriously erred in their wild guess without their being any positive or cogent material to sustain their estimation and the impugned tiers have been passed by completely overlooking the material facts placed by the appellant before the Income Tax Officer as well as before the First Appellate Authority which were available in their respective records. Therefore the impugned orders are not sustainable and require to be quashed with directions to the Income Tax Officer to verify the records properly and adjudicate the matter judiciously.

PRAYER

For these amongst other grounds that may be urged at the time of arguments the appellant most humbly prays to allow the appeal and set aside the impugned orders dated 22.05.2017 of the First Appellate Authority as well as the consequential assessment Order dated 31.12.2010 passed by the Income Tax Officer, Ward-2, Shimoga for the year 2008-09 under the provisions of section 143 (3) of the Income Tax Act 1961 and direct the Income Tax Officer, Ward-2, Shimoga to reframe the assessment order after giving proper hearing to the appellant and considering the documentary evidences maintained in the usual course of its business by the appellant and grant such other further relief as may be prayed at the time of arguments and also in the ends of justice.”

2. During the course of hearing, the Id. Counsel for the assessee has contended that the CIT(Appeals) has dismissed the appeal *in limine* without adjudicating the issues on merit. The CIT(Appeals) has not afforded proper opportunity of being heard to the assessee and dismissed the appeal

summarily. Therefore, in the interest of justice, the order of the CIT(Appeals) be set aside and matter be restored to his file for readjudication of the issues afresh, after affording opportunity of being heard to the assessee.

3. The Id. DR placed reliance upon the order of the CIT(Appeals).

4. Having examined the orders of the lower authorities in the light of rival submissions, I find that the CIT(Appeals) has dismissed the assessee's appeal summarily without affording proper opportunity of being heard to the assessee. Since the appeal was not disposed of on merit, I set aside the order of the CIT(Appeals) and restore the matter to his file with a direction to readjudicate the appeal afresh, after affording proper opportunity of being heard to the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 15th day of December, 2017.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 15th December, 2017.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.