

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM]

I.T.A No. 511/Kol/2015

Assessment Year : 2009-10

Shri Biswanath Bid (Deceased) -vs.- I.T.O., Ward-1 (2)
Through L.R. and Son Shri Subrata Bid Asansol
Durgapur.
[PAN : AIUPB 0987 F]
(Appellant) (Respondent)

For the Appellant : None
For the Respondent : None

Date of Hearing : 31.01.2018.

Date of Pronouncement : 02.02.2018.

ORDER

This is an appeal by the assessee against the order dated 26.02.2015 of CIT(A)-Asansol relating to A.Y.2009-10.

2. The Assessee is an individual. He carries on the business of acting as stockist of Government lottery tickets. For A.Y. 2009-10 the assessee filed return of income on 28.09.2009 disclosing total income of Rs.4,14,605/-. An order of assessment dated 13.12.2011 was passed u/s 143(3) of the Income Tax Act, 1961 (Act) determining the total income of the assessee at a sum of Rs.15,58,174/-making the following additions :-

“Returned Income		Rs.4,14,605/-
Add : 1) Commission (Para 4):	6,78,573/-	
2) Interest Income (Para 5):	9,780/-	
3)Commission Income (Para 6):	32,429/-	
4)Undisclosed commissin Income(Para7)	1,720/-	
5)DD Payment (Para 8):	5,21,032/-	
6) Cash drawing (Para 9):	1,79,972/-	
7)Undisclosed commission income (Para 10):	<u>20,063/-</u>	Rs.14,43,569/-
Assessed Income :		Rs.18,58,174/-“

3. Aggrieved by the aforesaid order of assessment the assessee filed an appeal before the CIT(A). The appeal was filed on 31.10.2012. There was a delay of about 12 days in filing the appeal before CIT(A). The CIT(A) sent a letter dated 12.02.2012 to the assessee pointing out to the assessee that the appeal has been filed belatedly and is liable to be dismissed and called for an explanation from the assessee. It appears that the assessee did not send any reply to the aforesaid letter of the CIT(A). The CIT(A) therefore dismissed the appeal of the assessee.

4. Aggrieved by the aforesaid order of CIT(A) the assessee has preferred the present appeal before the Tribunal.

5. The Id. Counsel for the assessee filed written submissions. The Id. DR sought an adjournment on the ground of illness. I am of the view that since the order of CIT(A) is liable to be set aside for violation of principles of natural justice the request for an adjournment need not be acceded to.

6. In the written submission in ground no.1 it has been mentioned that the delay in filing the appeal was on account of illness of the assessee. It has further been pointed out in the written submission that the CIT(A) heard the authorised representative of the assessee and obtained remand report from the AO on various grounds of appeal raised by the assessee before CIT(A). It has been pointed out that the CIT(A) was satisfied with the explanation for delay in filing the appeal but for reasons best known to him has chosen to dismiss the appeal on the ground that it has been filed belatedly. It has been prayed that the order of CIT(A) may be set aside and various issues raised by the assessee in the grounds of appeal before CIT(A) should be decided on merits after affording opportunity of being heard to the assessee. It was also prayed that the delay in filing the appeal before CIT(A) should be condoned.

7. I have given a very careful consideration to the written submissions and the material available on record. I accept the stand taken in the written submission on the condonation of delay of 12 days in filing the appeal by the assessee before CIT(A), I also set aside the order of CIT(A) and direct the CIT(A) to decide the appeal on various grounds raised by the assessee before him on merits after affording the assessee opportunity of being heard. For statistical purpose the appeal of the assessee is treated as allowed.

8. In the result the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the Court 02.02.2018.

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 02.02.2018.
[RG Sr.PS]

Copy of the order forwarded to:

1. Shri Biswanath Bid (Deceased), Through L.R. and son Shri Subrata Bid, Benachitti, Mahiskapur Plot, Kaizer Lane, Durgapur Pin : 713213.
2. I.T.O., Ward-1(2), Asansol.
3. CIT(A)-Asansol
4. C.I.T- Asansol.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head Of Office/ D.D.O., ITAT Kolkata Benches

