

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.598/Bang/2018
Assessment Year :2008-09

Shri K. Shahanawaz Khan, No. 12/1, Varthur Road, Nagawarapalya, C.V. Raman Nagar, Bangalore – 560 093. PAN: ABFPK0426N	Vs.	The Assistant Commissioner of Income Tax, Circle – 1 (3) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	20.03.2018
Date of Pronouncement	:	20.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 2, Bangalore dated 16.01.2018 for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under.

“1. The learned Assistant Commissioner of Income Tax, had erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. The order passed is bad in law and against the principles of natural justice and is required to be quashed in toto.

2. The learned CIT(A) has erred in dismissing the appeal filed by the appellant holding that the appellant is not interested in pursuing the appeal as the appellant did not respond to the notices of hearing issued, The action of CIT(A) passing the order Ex parte being bad in law and against the principles of natural justice makes the appellate order bad in law and such order is liable to be quashed.

3.1 In any case, the learned Assessing Officer had erred in making an addition of Rs. 5,18,282/- to the income of the appellant. There is no discrepancy in bank account at all. All the transactions in bank

account are explainable. Hence the addition being erroneous is to be deleted.

3.2 In any case the addition as made is erroneous and excessive.

3.3 The various observations / conclusions drawn made during the course of assessment proceedings are contrary to available facts and law are to be disregarded.

4. The appellant denies the liability to pay interest u/s 234B and 234C of the Act. The Interest having been levied erroneously is to be deleted.

5. In view of the above and on other grounds to be adduced at the time of hearing, that the order as passed by Assessing Officer be quashed or at least the addition as made be deleted and the interest levied be also deleted.”

3. At the very outset, it was submitted by Id. AR of assessee that the impugned order of CIT(A) is ex-parte qua the assessee. She also submitted that in para 1 on page 2 of the order of CIT(A), it is stated by CIT(A) that three notices were issued for hearing on 27.11.2017, 21.12.2017 and 16.01.2018 and no one appeared for hearing and the assessee had neither replied nor applied for any adjournment. She submitted that this observation of the CIT(A) is not factually correct because as per pages 16 and 17 of paper book, the assessee has made application for adjournment on 27.11.2017 and 21.12.2017 and in respect of hearing fixed on 16.01.2018, she submitted that the order is passed by CIT(A) on the same date without deciding the issue on merit. She submitted that even if no one appeared before CIT(A) on 16.01.2018 then also, he should have decided the issue on merit. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. I find force in the submission of Id. AR of assessee that this is not correct on the part of CIT(A) to say that no adjournment request is filed in respect of hearing fixed on 27.11.2017 and 21.12.2017. This contention of Id. AR of assessee is also having force that even if no one appeared on 16.01.2018, the CIT(A) should have decided the issue on merit instead of dismissing the appeal in limine by following the Tribunal order rendered in the case of CIT Vs. Multiplan India Ltd. as reported

in 38 ITD 320 (Del). Under these facts, I set aside the order of CIT(A) and restore the matter back to its file for fresh decision after providing adequate opportunity of being heard to both sides.

5. In view of this decision, no adjudication is called for regarding the merit of the case at this stage and hence I do not make any comment on the merit of the case.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th March, 2018.
/MS/

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.