

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.566/Bang/2018
Assessment Year : 2013-14

Smt. Muniswamy Ratnamma, No. 170, 6 <sup>th</sup> Cross, 10 <sup>th</sup> Block, 2 <sup>nd</sup> Stage, Nagarabhavi, Bangalore – 560 072.  <b>PAN: ACUPR5154L</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 7 (2) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Shreehari Kutsa, CA
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	23.03.2018
Date of Pronouncement	:	23.03.2018

**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)-7, Bangalore dated 26.12.2017 for Assessment Year 2013-14.

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

*“1. The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

*2. The Appellant denies itself liable to be assessed to tax on a total income as determined by the learned AO as against the total income as declared by the Appellant on the facts and circumstances of the case.*

*3. The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal on technicalities, without considering the written submissions filed by the Appellant on the facts and circumstances of the case.*

*4. The learned Commissioner of Income Tax (Appeals) ought to have granted another opportunity of hearing on the facts and circumstances of the case.*

*5. The learned Commissioner of Income Tax (Appeals) ought not to have dismissed the appeal for mere non-filing of appeal electronically on the facts and circumstances of the case.*

*6. The Appellant denies to be assessed to tax on total income as determined by the learned AO as against the total income reported by the Appellant on the facts and circumstances of the case.*

7. *The Commissioner of Income Tax (Appeals) ought to have adjudicated the matter and held that the Assessment Proceedings conducted by the learned Assessing Officer and consequent order of assessment passed by the learned Assessing Officer is in violation of principles of natural justice and therefore not sustainable in law on the facts and circumstances of the case.*

8. *The Commissioner of Income Tax (Appeals) ought to have adjudicated the matter and held that the learned Assessing Officer having failed to issue the statutory notice under section 143(2) of the act, the proceedings are not sustainable on the facts and circumstances of the case.*

9. *The Commissioner of Income Tax (Appeals) ought to have adjudicated the matter and held that the learned Assessing Officer having failed to dispose the objections filed by the Appellant on the issue of non-granting of sufficient time and conducting hearing at the fag end of the year and on the issue of non-issue of statutory notices, the proceedings are rendered bad in law for this reason also, on the facts and circumstances of the case.*

10. *The Commissioner of Income Tax (Appeals) ought to have adjudicated the matter and held that the learned Assessing Officer having failed to send the order of assessment on or before the 31/03/2016, the order is rendered invalid and unsustainable in law on the facts and circumstances of the case.*

11. *Without prejudice, the learned AO failed to give TDS credit available to the credit of the Appellant on the facts and circumstances of the case.*

12. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax, the Appellant denies itself liable to be charged to interest under sections 234A, 234B and 234C of the Act which under the facts and circumstances of the case deserves to be cancelled. The calculation of interest under sections 234A, 234B and 234C is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.*

13. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

14. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

3. At the very outset, it was submitted by Id. AR of assessee that the last date of hearing fixed by CIT (A) was on 22.12.2017 for which the notices were sent by speed post to the assessee and the AR and notices were duly served also. He submitted that the assessee does not dispute the service of notice in respect of hearing fixed on 22.12.2017 but the Id. AR of assessee could not appear because his father was hospitalised because of heart ailment during that period and subsequently, he has filed written submissions before the Id. CIT (A) on

28.12.2017 copy of which is furnished along with written submissions filed before the Tribunal. But the impugned order was passed by CIT (A) on 26.12.2017 and therefore, the same were not available before CIT (A) when the impugned order was passed by him. He submitted that in the interest of justice and under the present facts, the matter should be restored back to the file of CIT(A) for fresh decision after providing reasonable opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A).

4. I have considered the rival submissions and I find force in the submissions of Id. AR of assessee that because of the sudden illness of the father of the Id. AR of assessee, he could not appear before CIT(A) on the appointed date of hearing and therefore, no effective opportunity of hearing was available to the assessee and considering these facts and in the interest of justice, I set aside the order of CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being heard to both sides.
5. In view of this decision, no adjudication is called for on merit of the case at this stage. 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 23<sup>rd</sup> 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.