

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.520/Bang/2018
Assessment Year :2005-06

Sri P.M. Ramanujulu, C/o Dr. Blesson John Prabhakar, No. 60/1, 2 nd Floor, Backside Shariff Residency, Narayanappa Block, Marappa Garden, Benson Town, Bangalore – 560 046. PAN: AANPR1118H	Vs.	The Income Tax Officer, Ward – 5 (3) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Sukumar, Advocate
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	19.03.2018
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)-12, Bangalore dated 15.12.2017 for Assessment Year 2005-06.

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

“1. The order dated 15.12.2017 of the Commissioner of Income-tax (Appeals)-12 is opposed to law, weight of evidences, probabilities, facts and circumstances of the case.

2. The learned Commissioner of Income-tax (Appeals) erred in not providing adequate opportunity of being heard.

3. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the appellant is not residing in India and was not aware of the posting of the case on various dates of hearing.

4. The learned Commissioner of Income-tax (Appeals) erred in not appreciating that the appellant was represented by a Chartered Accountant who was entrusted with the work of monitoring the case,

but he failed to follow up the case which has resulted in ex parte order.

5. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the appellant had valid explanation for deposit of cash into his Bank Account.

6. The learned Commissioner of Income-tax (Appeals) ought to have considered that there is mistake in the computation of income furnished by the Chartered Accountant who had prepared the statement of income and the same lead the Assessing Officer to believe that the deposit of cash is not explainable.

7. The grounds of appeal may be read as one without prejudice to another.

8. The Appellant craves leave to add, amend, substitute or delete any of the grounds of appeal raised herein.

9. For these and other grounds, the Hon'ble ITAT may be pleased to delete the addition, grant consequential reliefs and such other reliefs as the Hon'ble ITAT deems fit in the circumstances of the case, in the interests of justice.”

3. At the very outset, it was submitted by Id. AR of assessee that the order of AO is ex-parte qua the assessee passed by him u/s. 144 and the order of CIT (A) is also ex-parte qua the assessee. He submitted that admittedly, the CIT(A) has issued 14 notices and it is stated by him on page nos. 2 and 3 of his order that there was no reply and the last three notices have come back unserved. He submitted that as per form -35 filed before CIT(A), the address of assessee is given but in the same form-35, it was stated that the notices may be sent to AR of assessee M/s. Saleem & Co., Chartered Accountants and in that form 35, his address is also given. He also submitted that as per order of CIT(A), it is not clear as to whether the notices were sent on the address of the assessee or address of the CA as requested in form-35. He also submitted that the assessee was not residing in India and he has been residing in Singapore since 14.10.2006 till date and he was periodically visiting India for a short stay and had entrusted the work of representing before the Income Tax authorities to one M/s. Saleem and Co., C.A. and he was under the impression that the needful was being done by the CA and he was not aware of the notices being sent by the CIT (A) which were not being attended. He submitted that under

these facts and in the interest of justice, the matter may be restored back to the file of CIT (A) for fresh decision after providing adequate opportunity of being heard to the assessee. The Id. DR of revenue submitted that the assessee does not deserve any further opportunity because in spite of issuance of 14 notices by CIT(A) out of which only three have come back unserved, there was no compliance by the assessee and the assessee has not even submitted any changed address to the CIT(A).

4. I have considered the rival submissions. I find that this is true that as per the order of CIT(A), 14 notices were issued by him out of which last three notices issued in the year 2017 have come back unserved. I also find that in form-35 filed before CIT(A), the assessee has given his address and has given address of CA also in column "Address to which notices may be sent to the assessee". Hence, this was required that the notices were sent to address of CA but from the order of CIT(A), this is coming out that whether he has sent the notices to assessee or his CA. In the order of CIT(A), on the first page, the address of the assessee is mentioned instead of the address of the CA of the assessee. The Id. AR of assessee also submitted copy of passport of assessee as per which, it is seen that assessee was residing in Singapore for most of the time during this period. Considering all these facts, I feel it proper that in the interest of justice, the matter may be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee.
5. Hence I set aside the order of CIT (A) and restore the matter back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to assessee. The notices should be sent to assessee as well as to the CA of the assessee of whom the address is given in the form-35. if there is any change in the address of the assessee or CA of the assessee, the assessee should inform the CIT(A) within one month from the date of this order about the new address at which notices should be sent by CIT(A). The CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides.

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

7. 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 23rd March, 2018.
/MS/

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.