

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

S.P. No. 108/Bang/2018 (in ITA No. 924/Bang/2018)
Assessment Year :2014-15

&

ITA No. 924/Bang/2018
Assessment Year :2014-15

Shri Mohan Kumar Gowda .C, No. 7/255-B, Southern Extension, Chikkalingegowda Extension, Kollegal, Chamarajanagara – 571 440. PAN: ACWPM1023D	vs.	The Assistant Commissioner of Income Tax, Circle – 1 (1), Mysore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Vani .H, Advocate
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	20.04.2018
Date of Pronouncement	:	20.04.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This stay petition is filed by the assessee seeking stay of outstanding disputed demand of Rs. 9.38 Lakhs and the appeal of the assessee is directed against the order of Id. CIT (A), Mysore dated 31.10.2017 for Assessment Year 2014-15.

2. In course of hearing, it was pointed out by Id. AR of assessee that the impugned order of CIT(A) is ex-parte qua the assessee and she further pointed out that in the Form No. 35 filed before CIT(A), the assessee has provided address of the assessee's advocate for serving the notice on the assessee but in fact, the notice was issued in the name of the assessee but the address given in the notice is that of the advocate of the assessee and because of this mismatch, the notice was not served on the assessee and Id. CIT(A) has passed the order ex-parte

qua the assessee on 31.10.2017 and therefore, in the interest of justice, the matter should be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee and if that is done then the stay petition of assessee will become infructuous. The Id. DR of revenue supported the order of CIT(A).

3. We have considered the rival submissions. We find that in the Form No. 35, copy of which has been filed by assessee along with the appeal memo, the address for serving the notice on assessee was provided as No. 73, CISRS Building, Millers Road, Benson Town, Bangalore – 560 046 and the notice has been sent by the CIT(A) at this address only. Now the argument raised before us is this that this address is of the advocate of the assessee and therefore, the name of the advocate should have been mentioned in the address of the notice sent by CIT (A). Admittedly this was not done by CIT(A) but in the Form No. 35 also, the assessee has not mentioned the name of the advocate of the assessee of which the address is given by the assessee in Column 17 of Form No. 35. Be that as it may but this is the claim of the assessee that notice was not served on the assessee and as per Para 3 of the order of CIT(A) also, the notice has been returned back by postal department to CIT(A) with the postal remarks “no such person at this address”. Under this factual position, we feel it proper that the matter should be restored back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to both sides. Accordingly, we set aside the order of CIT(A) and restore the matter back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. The notice of hearing should be sent by CIT(A) to the assessee as well as to the advocate of the assessee whose address is given in column 17 of Form No. 35 and the name of the advocate stated before us as Smt. Vani .H, Advocate.
4. In view of this decision, no adjudication is called for regarding the merit of the case at the present stage. Since the appeal of the assessee is being decided by this order, the stay petition has become infructuous and is liable to be dismissed as such. We dismiss the same.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes and the stay petition filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th April, 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.