

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BENGALURU (SMC)**

**SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA Nos.1993 & 1994/Bang/2018  
(Assessment years: 2004-05 & 2005-06)

Sri Mallikarjun Vidya Vardhak Sangh,  
C/o RKM, Ayurvedic Medical College,  
Behind KC Nagar, 100 Ft. Ring Road,  
Vijayapur-586103. ... Appellant  
*PAN:AAGTS4396D*

Vs.

Income-tax Officer (Exemptions),  
Ward-1,  
Gulbarga. ... Respondent

Appellant by : Shri Mallah Rao, Advocate.  
Respondent by : Smt. H.L.Soumya Achar, Addl.CIT(DR)

Date of hearing : 20/09/2018  
Date of pronouncement : 28/09/2018

**O R D E R**

These appeals by the assessee are directed against the *ex-parte* orders of the Id.CIT(A), Gulbarga; both dated 30/03/2018 for assessment years 2004-05 2005-06. Since both appeals were heard together, we deem it appropriate to dispose them off by way of this common order.

2. Briefly stated, the facts relevant for disposal of these appeals are as under:-

2.1 The assessee filed its returns of income for assessment years 2004-05 and 2005-06 on 19/2/2007 declaring NIL income. The Assessing Officer (AO) observing that the assessee has surplus income of Rs.20,73,550/- and Rs.25,02,320/- in assessment years 2004-05 and 2005-06, initiated proceedings u/s 147 of the Income-tax Act,1961 (in short 'the Act'). Since the assessee did not response to notice issued u/s 148 of the Act and other notices and letters issued u/s 148 of the Act and other notices and letters issued by the AO, the assessment proceedings for both assessment years

were concluded ex-parte u/s 144 u/s 147 of the Act vide separate orders dated 21/12/2010. On appeal, the Id.CIT(A), Belgaum, due to non-appearance by the assessee dismissed the assessee's appeals for assessment years 2004-05 and 2005-06 *ex-parte* vide orders dated 4/2/2014.

On further appeal by the assessee, a co-ordinate bench of this Tribunal in its combined order in ITA Nos.525 & 664/Bang/2014 dated 27/6/2014 restored the assessment for both assessment years 2004-05 and 2005-06, to the file of the AO for re-adjudication.

2.2 In the second round of assessment proceedings for assessment years 2004-05 and 2005-06, assessee did not respond to notice issued u/s 142(1) of the Act and neither appeared before the AO nor filed/produced any details documents to substantiate its claim made in the returns of income. In these circumstances, the AO, once again concluded the assessments for both these assessment years *ex-parte* u/s 143(3) r.w.s.254 of the Act vide orders dated 31/3/2016.

2.3 Aggrieved by the orders of assessment dated 31/3/2016 passed u/s 143(3) r.w.s. 254 of the Act for assessment years 2004-05 and 2005-06, the assessee preferred appeals for these assessment years before the Id.CIT(A), Gulbarga. The Id.CIT(A) dismissed both the assessee's appeals *ex-parte* vide separate orders dated 30/3/2018 for non-prosecution; holding as under at paras.8.0 to 10.0 (extracted from impugned order for assessment year 2004-05):-

8.0 It is seen that the Assessing Officer issued notice dated 23/03/2016 posting the case for hearing on 30/03/2016 and the said notice was served on 29/03/2016. The AO has not followed principles of natural justice and has not afforded sufficient opportunity and proceeded to complete the assessment *ex parte*. The contentions of the appellant that he was not given a reasonable opportunity deserves certain consideration. But however, the conduct of the assessee during the appellate proceedings leaves much to be desired. The case was initially posted for hearing on 17/04/2017. On the said date of hearing none appeared. Nor any written submissions were made. The case was posted for hearing again on 28/02/2018. There was no compliance even to this notice. Finally the Authorised representative of the

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appellant appeared. But however, no explanation/submissions were given in support of its claim. Thus, it is a case of indifferent attitude of the appellant for not paying due attention and care to appellate proceedings. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum, "VIGILANTIBUS ET NON DORMIENTIBUS SERVIUNT LEGES". The appellant assessee has failed to use the opportunities given to him to give proper submissions.

**9.0** In such a situation, the appeal is liable to be dismissed in terms of the verdicts of the Hon'ble Apex Court and various High Courts. The Hon'ble Apex Court in the case of CIT Vs B N Bhattacharjee and others ( 118 ITR 461) held that an appeal means an effective appeal, and preferring an appeal means more than formally filing it but effectively pursuing it.

**10.0** In the result, the appeal is **dismissed**.

3.1 The assessee, being aggrieved by the orders of the Id.CIT(A), Gulbarga, dated 30/3/2018 for assessment years 2004-05 and 2005-06, has preferred these appeals before the Tribunal, wherein it has raised identical grounds. We extract hereunder the grounds raised in the appeal for assessment year 2004-05:-

- (1) The Hon'ble Commissioner of Incometax, (Appeal) is wrong in dismissing the appeal of the appellant, and conforming the assessment order of the assessing officer passed u/s 143(3) r/w Sec. 254 by restoring the earlier order for said asst. year passed u/s 144 r/w 147, without valid grounds.
- (2) The reasons assigned by the Hon'ble CIT are not correct.
- (3) The Hon'ble CIT(A) erred in confirming the assessment order passed without providing reasonable opportunity of the appellant of being heard which are contrary to natural justice
- (4) The appellant submits that the hearing notices u/s 142(1) and 143(2) dt. 23-03-2016 were served on the appellant on 29-03-2016 requiring the appellant to attend before the assessing authority on 30-03-2016 and on account of year-end work[pressure and constant ill-health, the authorized representative could not attend on the appointed date i.e. 30-03-2016, and put forth the plea and submissions before the assessing authority and also putting forth its claim of exemption u/s 10(23C)(iiiad) as per specific directions of the Hon'ble ITAT/, Bangalore.
- (5) The Hon'ble CIT(A) is in remarking that that appellant did not appear on 17-04-2017. The authorized representative had actually attended on that date and the hearing could not be taken up by the CIT(A) owing the difference of opinion about jurisdiction of the CIT(A) to entertain the appeal.
- (6) The appellant, therefore, prays that the ex-parte order passed by the Assessing Officer be cancelled and the appellant be provided with fresh of being heard and for putting forth its claim exemption u/s 10(23C)(iiiad), as pleaded before the ITAT, Bangalore earlier.
- (6) The appellant begs leave to add, alter or amend any of the foregoing grounds of appeal That may be urged at hearing state.

The Id.AR was heard in support of the grounds raised (supra).The Id.AR, at the bar, undertook to ensure the assessee co-

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operates with the Department in complying with notices for hearing and filing of details/submissions, should the assessee's plea in ground No.6 of these appeals, for setting aside of the orders of the authorities below be allowed.

3.2 Per contra, the Id. DR for Revenue emphatically opposed the grounds raised by the assessee seeking set aside of the impugned orders. According to the Id. DR, the conduct of the assessee, in not complying with the statutory notices issued for hearing of the assessee's case in both assessment and appellate proceedings, demonstrate the impunity with which the assessee ignores and refuses to co-operates with the Department in concluding both assessments and appeals. Even though the co-ordinate bench of this Tribunal in its orders dated 27/6.2014 for these very assessment years (supra) had afforded the assessee with a second chance to explain its claims, the assessee has failed to attend the hearing opportunities granted, constraining the authorities below to dispose its assessments/appeals *ex-parte* for non-prosecution. In view of the above, the Id. DR submits that even though the impugned orders are passed *ex-parte*, no useful purpose would be served by setting aside the orders of the authorities below for re-adjudication in the light of the assessee's non-compliant conduct in the first two rounds of assessments and appeals.

3.3.1 I have head the rival contentions and perused and carefully considered the material on record. From an appraisal of the material on record it is seen that the first round of assessments for assessment years 2004-05 and 2005-06 were passed *ex-parte* u/s 144 r.w.s.147 of the Act, vide separate orders dated 21/12/2010. On appeal, the Id.CIT(A) Belgaum, disposed the appeals for assessment years 2004-05 and 2005-06 *ex-parte* for non-prosecution by the assessee. On further appeal, the co-ordinate bench of this Tribunal in its orders in ITA Nos.525 & 664/Bang/2014 dated 27/6/2014 set aside the orders of the authorities below and restored the assessments for assessment years 2004-05 and 2005-06 to the file of the AO for re-adjudication,

giving the assessee liberty to raise all the pleas and submit details in support of its explanation.

3.3.2 In the second round of proceedings also, the AO concluded the assessments *ex-parte* u/s 143(3) r.w.s. 254 vide orders dated 31/3/2016. In this regard, we observe from the findings of the Id.CIT(A) at paras. 8 to 10 of the impugned orders for both assessment years 2004-05 and 2005-06, (extracted at para 2.3 of this order) that the Id.CIT(A) was of the view that the AO had violated the principles of natural justice. At para.8 the Id.CIT(A) observed that:

*"8.....It is seen that the Assessing Officer issued notice dated 23/03/2016 posting the case for hearing on 30/03/2016 and the said notice was served on 29/03/2016. The AO has not followed principles of natural justice and has not afforded sufficient opportunity and proceeded to complete the assessment ex-parte. The contentions of the appellant that he was not given a reasonable opportunity deserves certain consideration . ."*

3.3.3 After having made the above observations and rendered such findings, the Id.CIT(A), himself, after affording the assessee two hearings on 17/4/2017 and 28/2/2018, as recorded in the impugned orders, also proceeded to dismiss the assessee's appeals for assessment years 2004-05 and 2005-06 *ex-parte*, for non-prosecution, without disposing off on merits, the assessee's appeals, *inter alia*, on the issue of its claim for exemption u/s 10(23C)(iiiad) of the Act, raised in ground of appeal No.6 before him.

3.3.4 In the factual matrix of the case, as discussed above from paras. 3.1 to 3.3.3 of this order (*supra*), I find that in both rounds of assessment and appellate proceedings, the assessments and appeals for assessment years 2004-05 and 2005-06 have been passed *ex-parte* for non-prosecution/non-appearance/non-attendance by the assessee. It is true that, in the second round of proceedings as directed by the co-ordinate bench of this Tribunal (*supra*), the assessee had failed to comply with the notice issued for

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hearing issued by the authorities below. However, as observed by Id.CIT(A) at para.8 of impugned orders (supra), it is seen that after the Tribunal's order dated 27/6/2014 setting aside the assessments for re-adjudication to the file of the AO, the AO afforded the assessee only one opportunity of hearing, after almost 21 months after the Tribunal's order dated 27/6/2014 and that too issued the only notice for hearing dated 23/3/2016, that was served on assessee on 29/3/2016, posting the case for hearing on 30/3/2016, and proceeded to complete the orders of assessment *ex-parte* on 31/3/2016. After sitting on the re-adjudication of assessments for assessment years 2004-05 and 2005-06 for almost 21 months, the record shows AO completed the entire re-assessment proceedings; all in the matter of 7 days. Having himself failed to carry out the directions of the Tribunal in letter and spirit, the AO, to add insult to injury, records at para. 4 of his orders of assessment:

"4. . . . .  
*Despite the specific direction ordered by the Hon'ble ITAT, Bangalore, the assessee neither attended this office nor produced any explanation/details. . . .*"

3.3.5 As rightly pointed out by the Id.CIT(A) in the impugned orders, the AO has not followed the principles of natural justice and not afforded the assessee sufficient opportunity of being heard before completing the assessments *ex-parte* for assessment years 2004-05 and 2005-06; all in a period of 7/8 days; from date of issue of notice on 23/3/2016, service of notice on 29/3/2016; the hearing on 30/3/2016 and completion of assessment on 31/3/2016. This is a classic case where the principles of natural justice have been grossly violated by the callous, casual and perverse attitude of the AO, to an assessee. I also find that the Id.CIT(A) himself, after fixing two hearings, has also disposed off the appeals *ex-parte* for non-prosecution; without adjudication or the merits of the assessee's claim for exemption u/s 10(23C)(iiiad) of the Act raised in ground of appeal No.6 before Id.CIT(A). In these circumstances, as narrated above, from pars.3 to 3.3.5 of this order, I am

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constrained to set aside not only the *ex-parte* orders of assessment passed u/s 143(3) r.w.s. 254 of the Act dated 31/3/2016 for both assessment years 2004-05 and 2005-06, but also the impugned orders of the Id.CIT(A) thereon dated 30/3/2018 and restore the matter of assessment for these two assessment years to the file of the AO for re-adjudication. The AO is directed to take up the re-assessment proceedings for assessment years 2004-05 and 2005-06 immediately on receipt of these orders and afford the assessee sufficient and adequate opportunities of being heard and to file details/submissions in regard to its claims, *inter alia*, its claim for exemptions 10(23C)(iiiad) of the Act; which shall be duly considered before adjudicating thereon by way of speaking and reasoned orders. The assessee is also directed to comply with notices for hearing and co-operate with the Revenue in filing details required and called for i.e. orally undertaken by the Id. AR at the Bar. Failure to do so by the assessee would be viewed adversely and Revenue would be free to take action in this regard as per law. I hold and direct accordingly.

4. In the result, the assessee's appeals for assessment years 2004-05 and 2005-06 are treated as allowed for statistical purposes.

*Order pronounced in the open court on 28<sup>th</sup> September, 2018*

sd/-

**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru.  
D a t e d : 28/09/2018  
*srinivasulu, sps*

**Copy to :**

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

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore