

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.263/Coch/2018
Assessment Year : 2014-15

AY Broadcast Foundation, GFA Buildings, Manjadi, Thiruvalla. [PAN:AAFCA 3216]	Vs.	The Assistant Commissioner of Income-tax, Circle-1, Thiruvalla.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri M.S. Venkatachalam, CA
Revenue by	Smt. A.S. Bindhu, DR

Date of hearing	11/09/2018
Date of pronouncement	24/09/2018

ORDER

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kottayam dated 26/03/2018 and pertains to the assessment year 2014-15.

2. The assessee has raised the following grounds:

1. The learned CIT (Appeals) was not correct in confirming the assessment made u/s 143(1) by CPC Bangalore assessing the entire income of Rs. 5,28,74,15/- received as broadcasting charges.

2. The learned CIT (Appeals) was wrong in not allowing any of the expenditure incurred towards earning the income.

3. The Order of the learned CIT (A) refusing to admit the appeal on the ground that it was time barred and sufficient cause was not shown is bad in law,

4. On the facts in the circumstance case, the learned CIT (A) failed to consider the affidavit requesting to condone the delay in filing the appeal explaining the sufficient genuine reasons for the delay, which is against the principle of the natural justice.

5. The learned CIT (Appeals) did not find any justification in not allowing any of the expenditure incurred for earning the income assessed to tax while concluding that the company was not eligible to claim deduction u/s 11.

6. The learned CIT (Appeals) was not justified in upholding the assessment made by CPC Bangalore u/s 143 (1) considering the entire income as income and not allowing any of the legitimate expenditure incurred for earning while disallowing deduction u/s 11 as claimed by the Company in the income tax return and not treating the company as a business entity.

7. For these and other grounds to be adduced at the time of hearing, it is prayed that the order of the Learned Commissioner of Income-Tax (Appeals) may be quashed.

3. The facts of the case are that the assessee filed return of Income for A.Y. 2014-15 disclosing Rs. Nil income after claiming exemption of Rs. 5,28,74,150/- under section 11 of the I.T. Act, 1961. The assessee did not have registration under section 12AA of the Act for the A.Y. 2014-15 as the High Court of Kerala had cancelled the registration vide order dated 19.12.2011. The assessee was in appeal before Supreme Court on the issue of granting registration under section 12AA of the Act. The return was processed under section 143(1) of the Act and income was computed at Rs. 5,28,74,150/- after denying the exemption claimed under section 11 of the Act. The intimation under section 143(1) of the Act was

received by the assessee on 18.03.2016. Subsequently, the assessee filed rectification petition under section 154 of the Act on 28.04.2016 with the CPC, Bangalore and the rectification request was rejected by the CPC, Bangalore on 02.06.2016.

4. Against this, the assessee went in appeal before the CIT(A).

5. There was a delay of 201 days in filing the appeal before the CIT(A). The assessee filed condonation petition explaining the reason for delay in filing the appeal. The CIT(A) had not condoned the delay on the reason that there was no sufficient cause for filing the appeal belatedly before him. Accordingly, he dismissed the appeal in limine. Without prejudice to the above, he also adjudicated the appeal on merit by holding that the assessee is not entitled for the claim u/s. 11 of the I.T. Act. The CIT(A) also observed that u/s. 143(1), the claim cannot be examined so as to consider the assessee as a business concern and to allow expenditure in this regard.

6. Against this, the assessee is in appeal before us. The Ld. AR drew our attention to the condonation petition filed by Rev. Fr. Praison John, Managing Director of AY Broadcast Foundation before the CIT(A) which reads as follows:

"1. That I am the Managing Director of AY Broadcast Foundation and authorized to sign documents for Income Tax. We received the Assessment order for AY 2014-15 on 18.03.2016 and as there was apparent mistake in the order we filed a rectification request u/s 154 on 28,04.2016. The request was rejected on 02.06.2016.

2. That the appeal was to be filed by 17th April 2016.

3. That we could file the above appeal late by about 7 months.

4. That the delay was caused solely since I was ill for six months from 15.04.2016 with acute hypertension, and there was no other person authorized to file an appeal on behalf of the company.

5. That I could recover only by the last week of October and as soon as I had recovered from illness, I noticed that the rectification request was rejected and arranged to file the appeal, without further delay.

6. Unless the appeal is taken into consideration it will be put to irreparable damage and loss to the company."

Admission of appeals filed with delay is governed by the provisions of 249(3) of the Act and the same reads as under:

"The Commissioner(Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period."

6.1 Further, the assessee has filed three medical certificates dated 15/04/2016, 02/05/2016 and 01/08/2016 stating that Rev. Fr. Praison John was medically sick and suffering from coronary artery disease and prayed to condone the delay in filing the appeal before the CIT(A).

7. The Ld. DR relied on the order of the CIT(A).

8. We have heard the rival submissions and perused the record. Admittedly, there was delay of 201 days in filing the appeal before the CIT(A). The assessee had explained the delay before the CIT(A) by way of petitions. However, the delay was not supported by any medical certificate of the person regarding his sickness who was authorized to file the appeal before the CIT(A), namely Rev. Fr. Praisson John. Hence, the CIT(A) did not admit the appeal. However, he went on deciding the appeal on merit which is not appropriate. Once he has not admitted the appeal, there is no question of adjudication of appeal on merit which is inappropriate and cannot be appreciated. Accordingly, the finding of the CIT(A) in adjudicating the appeal on merit is vacated.

8.1 Coming to the condonation of delay in filing the appeal before the CIT(A), the assessee has filed three medical certificates before us which were not filed before the CIT(A). This being an additional evidence, it is appropriate to remit the issue to the file of the CIT(A) to examine the same in accordance with law after giving reasonable opportunity of being heard to the assessee and accordingly, the issue in dispute is remitted to the file of the CIT(A) for his fresh consideration.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on this 24th September, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 24th September, 2018

GJ

Copy to:

1. AY Broadcast Foundation, GFA Buildings, Manjadi, Thiruvalla.
2. The Assistant Commissioner of Income-tax, Circle-1, Thiruvalla.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin