

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER

ITA No.1925/Bang/2018
Assessment year : 2012-13

Mohammed Shafeeq Ur Rehman, M/s. Maharashtra Feeds & General Commodities, P B No.1, B Katehalli Industrial Area, B.M. Road, Dairy Circle, Hassan – 573 201. PAN: AEKPR 0991P	Vs.	The Income Tax Officer, Ward 2, Hassan.
APPELLANT		RESPONDENT

Appellant by	:	Smt. R. Anitha, CA
Respondent by	:	Shri Rajendra Chandekar, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.08.2018
Date of Pronouncement	:	03.10.2018

ORDER

This is an appeal by the assessee against the order dated 31.10.2018 of the CIT(Appeals), Mysuru relating to assessment year 2012-13.

2. There is a delay of about 19 days in filing this appeal by the assessee. It has been explained by the assessee in the affidavit filed before us that the erstwhile CA, Shri Yedunandan, who appeared before the AO filed the appeal before the CIT(A), but did not represent before the CIT(A) when the appeal was fixed for hearing. The erstwhile CA informed the assessee that he would take appropriate steps against the order of CIT(A), but later on informed the assessee that he was not in a position to

handle the further proceedings and thereafter the assessee approached the present CA to file the appeal. In the meantime, there occurred a delay of 19 days in preferring the present appeal. I am of the view that the delay in filing the appeal is not wilful or wanton, but due to bonafide circumstances explained above. I therefore condone the delay in filing the appeal by the assessee.

3. As far as the merits of the appeal of the assessee is concerned, the only issue raised is with regard to an addition of a sum of Rs.21,86,718 made by the AO on account of unexplained sundry creditors which was confirmed by the CITA.

4. The assessee is an individual. He derives income by trading in poultry feeds and general commodities. In the course of assessment proceedings, the AO called for details of sundry creditors appearing in the balance sheet totalling Rs.2,97,08,736. The assessee furnished details of sundry creditors. The AO on enquiry from sundry creditors noticed variation in the amounts due as stated by sundry creditors and as shown by the assessee in the books of account. The variation was with reference to 19 creditors and details in this regard were as follows:-

Sl. No.	Name & Address	Difference
1.	Bhadra Agencies	11280
2.	Bhuvana Agencies	35216
3.	Care Cure	24600
4.	C & M Fanning Ltd., Kolhapur	263768
5.	Gajanana Enterprises	21350
6.	Globe Cotton Corporation	176894
7	Kavi Agencies	62700

8	Kedarnath Sajjan Kumar	590435
9.	Madhav Feeds & Fats Ltd.	449474
10	Mohan Kumar (Maize)	89638
11.	Omkareshwar Solvex Pvt. Ltd.	87256
12.	Raj Pharma Pvt.	21876
13.	R.B Traders	50000
14.	Shiva Parvathi Poultry Farm	50000
15.	Shyamkala Agro	27300
16.	Siddhi Vet Chem	72831
17.	Siddon Biotech	17475
18.	Venkys India Ltd.	44468
19..	Vaishnavi Chiks	90237
	Total Difference	2186798

5. According to the AO, the assessee could not explain the difference. Therefore, the AO added the aforesaid difference to the total income of assessee as unexplained credits.

6. The assessee filed appeal before the CIT(A) against the order of AO. The appeal was fixed for hearing on 20.9.2017. The Id. counsel for the assessee stated before me that it was the first date of hearing of appeal. The CIT(A) noticed that despite service of notice by speed post, none appeared on behalf of assessee on the date of hearing. He therefore proceeded to decide the appeal *ex parte* and on the basis of material on record. He found no grounds to interfere in the order of AO and accordingly confirmed the order of AO.

7. Aggrieved by the aforesaid order, the assessee has filed the appeal before the Tribunal.

8. The Id. counsel for the assessee stated before me that only one opportunity was afforded by the CITA and it has already been explained in the affidavit of assessee filed in support of application for condonation of delay that the erstwhile CA did not attend the proceedings before the CITA. It was pointed out that all the creditors in whose account there was difference, were paid by cheques by the assessee in the subsequent assessment year and therefore the discrepancy between the sums shown as payable in the books of account and in the books of sundry creditors is not correct. Therefore, the addition made should be deleted.

9. The Id. DR relied on the order of CITA.

10. I have considered the rival submissions and am of the view that the assessee did not have proper opportunity of being heard before the CITA. There was only one hearing before the CITA and that hearing was not represented by the erstwhile CA of assessee. In these circumstances, I set aside the order of CITA and remand for fresh consideration by the CITA the issue with regard to the addition of Rs.21,86,798, after affording assessee opportunity of being heard.

11. For statistical purposes, the appeal of assessee is treated as allowed.

Pronounced in the open court on this 3rd day of October, 2018.

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 3rd October, 2018.

/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.