

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.1814/Bang/2018
(Assessment Year : 2009-10)

Shri. Syed Ismail Quadri,
Flat No.104, Chinnar Residency,
152/2/2, Wheeler Road, Fraser Town,
Bengaluru 560 005 .. Appellant
PAN : AACPQ2858J

v.

Asst. Commissioner of Income-tax (CPC),
Bengaluru .. Respondent

Assessee by : Shri. Narendra Sharma, Advocate
Revenue by : Shri. Siddappaji R. N., Addl. CIT

Heard on : 24.09.2018
Pronounced on : 28.09.2018

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee, against the order of the CIT (A), Mysuru, dt.30.12.2016, for the assessment year 2009-10, on the following grounds of appeal

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in dismissing the appeal on the ground that the appellant had not stated the reason for the delay in filing the appeal under the facts and in the circumstances of the appellant's case, which is on an erroneous appreciation of the facts of the case, as the appellant has pleaded for condonation of the delay and later substantiated by filing the medical certification which were not considered by the learned CIT[A] and hence his finding is vitiated.

3. Without prejudice to the above, there is no vested interest in delaying the filing of the appeal by the appellant and having regard to the ratio of the decision of the Hon'ble Karnataka High Court in the case of ISRO SATELLITE CENTRE reported in 263 CTR 549 [Kar] and the decision of the Hon'ble ITAT in the case of GLEN WILLIAMS in ITA 1078/Bang/2014 the delay in filing the appeal should have been condoned and the appeal may kindly be admitted and disposed off on merits.

02. Brief facts are, the assessee has filed the return of income and the case of assessee was processed u/s.143(1) of the Act. The income of the assessee was assessed by taking the wrong figure of Rs.15,00,500/- instead of the income declared by the assessee at Rs.1,75,050/-. The assessee filed rectification application to adopt the reported figure of Rs.1,75,050/-. However this was not done by the Revenue and hence the assessee filed appeal before the CIT (A).

03. The CIT (A) has dismissed the appeal on the ground of the appeal being filed beyond the period of limitation.

04. The Ld. AR submitted that the assessee moved an application for condonation of the delay in filing the appeal, which was

overlooked by the CIT (A) and the appeal was dismissed as barred by limitation.

05. Per contra, the Ld. DR relied on the order passed by the lower authorities.

06. We have gone through the order and perused the record. The view taken by the CIT (A) is eccentric as is clear from para 5 of the order of the CIT (A), wherein the CIT (A) had not even noticed the application filed for condonation of delay. Para 5 reads as under :

5. As per the Appeal Memo verified by the appellant and filed in Form No.35, the date of service of the relevant notice of demand which is disputed in this appeal was 09/09/2011. But the appellant preferred this appeal only on 23/11/2011, beyond the statutory time limit of thirty days for filing the appeal. No reason was stated for the delay in order to consider whether or not the appellant was prevented by a reasonable cause from preferring the appeal on time. No application seeking condonation of the aforesaid delay is found on record. Therefore, after due consideration of the facts pertaining to the inordinate delay in filing the appeal, the aforesaid delay is not condoned and therefore, the appeal is not admitted, as per law.

Moreover the assessee's case was processed u/s.143(1) whereby instead of the income declared by the assessee of Rs.1,75,050/-, a wrong figure of Rs.15,00,500/-was taken. Even on this ground the matter is required to be adjudicated by the lower authorities. However needful has not been done on the pretext of the appeal being barred by limitation. In our view the assessee has given a cogent reason for not filing the appeal within the due time. We remit the matter back to the file of the CIT (A) with a direction to

condone the delay in filing the appeal and decide the issue afresh after considering all the documents filed by the assessee and the assessment records in respect of adopting the wrong figure of income instead of the income declared by the assessee.

07. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28th day of September, 2018.

Sd/-
(JASON P. BOAZ)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 28.09.2018

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.