

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BANGALORE BENCH 'A'**

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

I.T. A. No.2439/Bang/2018
(Assessment Year : 2015-16)

Smt. C. I. Indira,
No.177/11, I Floor, 2nd Cross,
Siddaveerappa Badavane,
Davangere.

.... Appellant.

Vs.

Income Tax Officer,
Ward 1(1), Davangere.

..... Respondent.

Appellant By : Smt. R. Mrinalini, Advocate.

Respondent By : Shri Vikas Suryavanshi, Addl. CIT (D.R)

Date of Hearing : 04.10.2018.

Date of Pronouncement : 12.10.2018.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Davangere dt.26.03.2018 for the Assessment Year 2015-16.

2. Briefly stated, the facts of the case are as under :-

2.1 The assessee, an individual, is engaged in the business of retail trade in rice bran and husk. A survey under Section 133A of the Income Tax Act, 1961 ('the Act') was conducted at the assessee's business premises on 3.11.2014; in the course of which it was noticed that the assessee and her son had jointly invested in the purchase and renovation of a building to be used as a convention hall. The difference in the purchase consideration for building and investment made in renovation for building was admitted to be Rs.46,25,000; 50% of which was offered as additional income in the assessee hands in the year under consideration. The assessee filed her return of income for Assessment Year 2015-16 on 22.09.2016 declaring income of (-)Rs.4,95,076; only after issue of notices by the Assessing Officer calling upon the assessee to file the same. It was noted that the assessee had not included the additional income of Rs.23,12,500, admitted in the course of survey, in her return of income for Assessment Year 2015-16. The case was taken up for scrutiny and the assessment was completed under Section 143(3) of the Act vide order dt.27.12.2017, wherein the assessee's income was determined at Rs.38,44,740 in view of various additions / disallowances amounting to Rs.39,10,857.

2.2 Aggrieved by the order of assessment dt.27.12.2017 for Assessment Year 2015-16, the assessee preferred an appeal before the CIT(Appeals), Davangere. The learned CIT(Appeals) disposed off the appeal, vide the impugned order dt.26.3.2018, allowing the assessee partial relief.

3. The assessee, being aggrieved by the order of the CIT(Appeals), Davangere dt.26.03.2018 for Assessment Year 2015-16 has preferred this appeal before the Tribunal.

ORDER ON PETITION FOR CONDONATION OF DELAY OF 65

DAYS IN FILING APPEAL BEFORE THE TRIBUNAL.

4.1 As per the petition and Affidavit sworn to by the assessee, now filed before the Tribunal, admittedly there has been a delay of 65 days in filing the appeal. I have heard both parties and perused the Affidavit filed by the assessee seeking condonation of delay in filing the appeal and the judicial precedents in this regard. The Hon'ble Apex Court in the case of MST Katiji & Others (167 ITR 471) (SC), while explaining and laying down the principles that need to be kept in mind while considering an application for condonation of delay, has emphasised that substantial

justice should prevail over technical considerations. The Hon'ble Court also explained that a litigant does not stand to benefit by lodging the appeal late and that the expression 'every day's delay must be explained' does not mean that a pedantic approach should be taken. The doctrine should be applied in a rational, common sense and pragmatic manner.

4.2 Taking into account the account the aforesaid principles laid down by the Hon'ble Apex Court and after careful consideration of the submissions / reasons put forth by the assessee in the Affidavit, I am of the considered opinion that there was sufficient and reasonable cause for the delay of 65 days in filing this appeal, as even if the said delay is condoned, no loss would be caused to Revenue, as legitimate taxes payable in accordance with law alone will be collected. In the aforesaid factual matrix of the case in hand and judicial precedents on the subject, referred to above, I condone the delay of 65 days in filing this appeal before the Tribunal and admit the appeal for consideration and adjudication. It is accordingly ordered.

ORDER

5. In this appeal, the assessee has raised the following grounds of appeal :-

1. The learned Commissioner of Income tax (Appeals) erred in confirming the addition of Rs.8,00,000/- amount credited to the Capital Account being Gift received from her husband Sri. Hindudhar who is also an assessee.
2. The learned Commissioner of Income tax (Appeals) erred in confirming sum of Rs.1,00,000/- expenditure claimed by the appellant towards the payment made to the Income tax section 68 or 69 of the Act is whole in applicable to the transaction. The learned Commissioner of Income tax (Appeals) ought to have given setoff against the additions.
3. The learned Assessing Officer ought not to have levy interest u/s.234A, 234B and 234C of the Income tax Act.

5. **Ground No.1 – Unexplained Gift.**

5.1 In this ground, the assessee contends that the learned CIT(Appeals) had erred in confirming the addition of Rs.8,00,000 credited to the Capital Account, which is a gift from her husband.

5.2 The facts of the matter, as emanate from the record, are that in the course of assessment proceedings, the Assessing Officer noticed that in the period under consideration, the assessee had credited a sum of Rs.8 lakhs in her Capital Account, with the narration "Gift from C.I.

Indudhara (spouse)". On being required by the Assessing Officer to file details such as copies of gift deed, copy of return of income and financial statements, etc of the donor, the assessee failed to do so. In the absence of details / proof of having received the gift, the said sum amounting to Rs.8 lakhs was held to be an unexplained credit and brought to tax in the assessee's hands. On appeal also, the learned CIT(Appeals) dismissed the assessee's ground observing "Before me also, no evidences on materials are produced in support of their claims."

5.3.1 In respect of this ground, the learned Authorised Representative for the assessee filed an application of Rule 29 of the Appellate Tribunal Rules, 1963 (in short 'the Rules') seeking to admit additional evidence in the form of gift deed dt.19.2.2014 and acknowledgements of Income Tax Returns filed by Sri C.C. Indudhara, husband of the assessee, who the assessee claims in the donor of the gift of Rs.8 lakhs to her. As per the accompanying Affidavit dt.1.10.2018, the assessee submits as under at paras 3 to 5 thereof :-

3. I humbly submit that I have received a gift on 19.02.2014, a sum of Rs.8,00,000/- from my husband Sri. C.C. Indudhara. My husband is an income tax assessee, assessed to tax under PAN AALPI9538E. In the first hearing before the Income Tax officer, my representative had filed my final accounts for the relevant year. Subsequently, I was not able to communicate regularly with my representative regarding the same, as I was unwell and in financial difficulties. I could not contact my representative to verify further requirement. In support of the same, I seek to place on record, the gift deed between my husband Sri. C.C. Indudhara and me. I also seek to place on record, the ITR-V of Sr. C.C. Indudhara for the A.Y. 2014-15 and A.Y. 2015-16.
4. I humbly submit that the non-production of the supporting documents which I now seek to produce before this Hon'ble Tribunal, is unintentional and for the reasons beyond my control.
5. I humbly submit that the above documents are necessary and relevant for the proper adjudication of this matter. The addition of income of Rs.8,00,000/- made is not sustainable since the gift relates to the assessment year 2014-15 and the donor is also an income tax assessee.

5.3.2 I have heard both parties and perused and carefully considered the material on record. Taking into account the facts and circumstances of the case on this issue, where the addition of Rs.8 lakhs has been made and sustained for want of filing of required details / supporting documents to prove the gift by the assessee, in my considered view, the interest of substantial justice would be served by admitting the additional evidence in the form of documents, i.e. copies of gift deed dt.19.2.2014 and IT Returns for Assessment Year 2014-15 & 2015-16; placed at pages 4 to 7 of the assessee's paper book dt.1.10.2018, since they are necessary and relevant and could go to the root of the matter

for proper adjudication of this issue. In these circumstances, I admit the additional evidence as laid out above.

5.3.3 Having admitted the additional evidences filed by the assessee under Rule 29 of the Rules (supra), I set aside the orders of the authorities below and restore to the file of the Assessing Officer; the matter of the examination of the veracity of the assessee's claim that the credit of Rs.8 lakhs in her Capital Account is really a gift received from her husband. Needless to add, the assessee shall be afforded adequate opportunity of being heard in the matter and to file details / submissions required, which shall be duly considered before deciding the issue by way of a speaking and reasoned order. Consequently, Ground No.1 of the assessee's appeal is allowed for statistical purposes.

6. **Ground No.2 – Advance Tax – Added – Rs.1 lakh.**

6.1 in this ground, the assessee assails the orders of the authorities below in making / confirming disallowance of Rs.1 lac on account of payment of Advance Tax.

6.2 I have heard both parties and perused and carefully considered the material on record. I find from a perusal of the orders of the

authorities below that the aforesaid addition / disallowance of Rs.1 lac was made by the Assessing Officer on account of Income Tax paid by the assessee as he was of the view that no such payment of Advance Tax has been made as claimed in the assessee's Capital Account. The learned Authorised Representative drew the attention of the Bench to pages 1 to 3 of Paper Book, containing a copy of the assessee's I T Return for Assessment Year 2015-16 and the statement of computation of income to show that only Self Assessment Tax of Rs.1 lakh was paid and therefore the addition / disallowance was unwarranted. In my view, on an appreciation of the facts on record, I find that NIL Advance Tax was paid by the assessee in the year under consideration, as is reflected in the assessee's Income Tax Return for Assessment Year 2015-16 (copy placed at page 1 of Paper Book). Therefore, I find merit in the Assessing Officer's view that no Advance Tax of Rs.1 lac was paid by the assessee in the year under consideration as shown in her Capital Account for the year ending 31.3.2015. Further, I also find that the assessee has actually paid only Self Assessment Tax of Rs.1 lac vide Axis Bank Cheque on 1.5.2015 which would be reflected in the assessee's Capital Account for the next financial year. In the factual circumstances of the case, as

discussed above, I find no merit in this ground raised by the assessee and accordingly dismiss the same.

7. **Ground No.3 – Charging of interest u/s.234A, 234B
& 234D of the Act.**

In these grounds, the assessee denies itself liable to be charged interest under Section 234A, 234B & 234D of the Act. The charging of interest is consequential and mandatory and the Assessing Officer has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum H Ghaswala (252 ITR 1) (SC) and we therefore uphold the action of the Assessing Officer in charging the said interest in the case on hand. The Assessing Officer is, however, directed to recompute the interest chargeable under Section 234A, 234B & 234D of the Act, if any, while giving effect to this order.

8. In the result, the assessee's appeal for Assessment Year 2015-16 is partly allowed for statistical purposes.

Order pronounced in the open court on the 12th day of Oct.,2018.

Sd/-

(JASON P BOAZ)
ACCOUNTANT MEMBER

Bangalore,
Dt.12.10.2018.

*Reddy gp

Copy to :

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

Certified True Copy

Asst. Registrar
Income Tax Appellate Tribunal
Bangalore.