

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

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER

ITA Nos.2518 & 2519/Bang/2018
Assessment years : 2014-15 & 2015-16

Sri Sri Raghavendra Gurusarva Bhoumara Seva Trust, Fort Street, Maddur. Mandya District. 571 428. <b>PAN: AAAAS 8431N</b>	Vs.	The Assistant Commissioner of Income Tax, CPC, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, CA
Respondent by	:	Shri Vikas K. Suryavamshi, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.10.2018
Date of Pronouncement	:	12.10.2018

**ORDER**

These are appeals by the assessee against two orders, both dated 28.06.2018 of the CIT(Appeals), Mysore relating to assessment years 2014-15 & 2015-16.

2. The assessee is a trust. For the AYs 2014-15 & 2015-16, the assessee filed returns of income on 21.7.2014 and 14.8.2015 respectively, declaring income under the head 'income from other sources' of Rs.1,67,406 and Rs.1,30,526 and tax payable at NIL. The returns were processed by the Centralised Processing Centre (CPC) of the Income Tax Department. An intimation u/s. 143(1) of the Income-Tax Act, 1961 [“the Act”] dated 19.2.2016 and 15.9.2016 for the AYs 2014-15 & 2015-16

respectively was issued by the CPC, accepting the income returned by the assessee, but did not allow the claim of the assessee for NIL tax payable. In the intimation the tax payable on returned income was determined at Rs.50,223 and Rs.40,334 for the AY 2014-15 & 2015-16 respectively, besides interest u/s. 234B & 234C of the Act.

3. Against the intimations u/s. 143(1) of the Act dated 19.2.2016 and 15.9.2016 for the AYs 2014-15 & 2015-16, the assessee filed appeals before the CIT(Appeals). The appeals before the CIT(Appeals) were filed on 6.4.2017. There was a delay of about 380 days in filing the appeal for the AYs 2014-15 and 172 days delay in filing the appeal for the AY 2015-16 before the CIT(A). The appeals of the assessee were fixed for hearing before the CIT(A) on 17.5.2018 and 12.6.2018. On both the dates fixed for hearing, none appeared on behalf of the assessee. The CIT(A) found that there was application for condonation of delay in filing the appeals, but he was of the view that the reasons given for the delay in filing the appeals were attributed to the delay on the part of the tax consultant was self-serving statement which was not supported by any credible or verifiable evidence nor was there any admission by the tax consultants that they were responsible for the delay. In the circumstances, the CIT(A) refused to condone the delay in filing the appeals and dismissed the appeals of the assessee as unadmitted.

4. Aggrieved by the orders of the CIT(Appeals), the assessee has filed the present appeals before the Tribunal.

5. I have heard the rival submissions. In ground No.2, the assessee has raised a ground regarding CIT(A)'s action in not affording opportunity of being heard to the assessee. The delay in filing the appeal before the CIT(A) was because the assessee was pursuing an alternative remedy

before the AO by filing application u/s. 154 of the Act. My attention was drawn to the following dates and events:-

Date	Event
21/07/14	Date of filing Return of income AY 2014-15 declaring a total income of Rs.1,67,410/-
19/02/16	Date of intimation u/s.143(1) from CPC with demand of Rs. 65,534/-, the impugned order.
09/05/16	Date of application u/s.154 filed online with CPC
	The Assessee received reply from CPC stating that: Only Trusts registered u/s.12A/12AA i.e. Trust whose income exceeds the amount which is not chargeable to Income Tax without giving effect to provisions of Sec 11 and 12 of the Income Tax are required to filed Return in ITR-7 (139(4A)) and other Trusts are required to file Return in ITR-5.
	CPC Advised assessee to contact jurisdiction officer for further clarification.
14/12/16	Date of fresh application u/s. 154 before AO seeking for rectification of CPC Order.
15/12/16	Date of letter sent by AO seeking information and documents.
09/01/17	Date of reply filed by assessee before the Learned A.O
31/01/17	Date of rejection of the application u/s.154 by the learned A.O
06/04/17	Appeal filed against the order passed u/s. 143(1) of IT Act before CIT(A), Mysuru with application seeking Condonation of Delay of 380 days.
07/07/18	Date of order of the learned CIT(A) Mysuru.

Date	Event
14/08/2015	Date of filing Return of Income for AY 2015-16 declaring a total income of Rs.1,30,530/-
15/09/2016	Date of Intimation u/s.143(1) from CPC with demand of Rs. 49,080/-, impugned order
30/01/2017	Date of fresh application u/s,154 before AO Seeking for rectification of CPC Order
09/02/2017	Date of rejection of the application u/s. 154 by the learned AO
06/04/2017	Appeal filed against the order passed u/s. 143(1) of IT Act before CIT(A), Mysuru with application seeking Condonation of Delay of 172 days.
07/07/2018	Date of order of the learned CIT(A) Mysuru.

6. My attention was also drawn to the decision of the Tribunal in ITA No.823/Bang/2011 dated 14.6.2013 in the case of *M/s. Ganesh Shipping Agency* and in the case of *Mr. Glen Williams in ITA No.1078/Bang/2014* dated 7.8.2015 wherein it was held by the Tribunal that delay in filing

appeal which is caused by pursuing an alternative remedy amounts to reasonable cause.

7. I am of the view that the above submission of the assessee for delay in filing appeals before the CIT(Appeals) requires consideration by the CIT(Appeals). I am also of the view that the assessee did not have proper opportunity of being heard. Hence, I set aside the orders of the CIT(Appeals) and remand to the CIT(Appeals) for fresh consideration of the appeals by CIT(Appeals) both on the ground with regard to delay in filing the appeals and if the delay in filing appeal is condoned to decide the appeals on merit. I hold and direct accordingly. I allow the appeals for statistical purpose.

8. In the result, the appeals are allowed for statistical purposes.

Pronounced in the open court on this 12<sup>th</sup> day of October, 2018.

Sd/-  
( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 12<sup>th</sup> 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.