

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

I.T. A. No.2653/Bang/2018
(Assessment Year : 2008-09)

Shri E.M.V.M. Vishwanathan,
Cottacadu & Jeynacadu Group of Estates,
Horoor,Sunticoppa, Coorg Dist.,
Karnataka-571 231

.... Appellant.

Vs.

Income Tax Officer,
Ward 1, Madikeri.

..... Respondent.

Appellant By : Shri Balram R Rao, Advocate.

Respondent By : Shri B.L. Guruprasad, Addl. CIT (D.R)

Date of Hearing : 09.10.2018.

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 Commissioner of Income Tax (Appeals), Mysore dt.23.7.2018 for the Assessment Year 2008-09.

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

2.1 The assessee, an agriculturist having a Coffee Estate at Santicoppa & also earning income from travel business, filed his return of income for Assessment Year 2008-09 on 24.11.2009, admitting total income of Rs.2,16,130 and declaring agricultural income of Rs.28,54,382, The case was taken up for scrutiny and the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.23.12.2010 wherein the assessee's income was determined at Rs.4,26,140 and agricultural income at Rs.22,85,460.

2.2 Subsequently, the Assessing Officer received information that the assessee sold some properties at Thanjavur on 31.8.2007 for a total consideration of Rs.1,10,42,200 and had not declared Capital Gains arising thereon in the return of income filed for Assessment Year 2008-09. The Assessing Officer accordingly initiated reassessment proceedings under Section 147 of the Act and issued notice under Section 148 of the Act to the assessee on 23.3.2015 in order to bring to tax the assessee's income from Capital Gains on sale of properties at Thanjavur that had escaped assessment. The assessment was completed under Section 143(3) r.w.s. 147 of the Act vide order dt.28.3.2016 wherein the

assessee's income was determined at Rs.21,07,950; in view of addition of Rs.16,81,812 on account of Long Term Capital Gains (LTCG) arising on sale of property at Thanjavur to the assessee's income of Rs.4,26,148 as determined vide the original order of assessment under Section 143(3) of the Act dt.23.12.2010.

3. Aggrieved by the order of assessment passed under Section 143(3) r.w.s. 147 of the Act dt.28.3.2016 for Assessment Year 2008-09, the assessee preferred an appeal before the CIT (Appeals), Mysore. The learned CIT (Appeals) dismissed the assessee's appeal ex-parte for statistical purposes for reasons of (1) non-prosecution and (2) by holding the appeal filed to be defective for non-filing the original demand notice issued under Section 156 of the Act or to furnish a true copy thereof along with an Affidavit to the effect that the original notice of demand was either not served or lost, etc.

4.1 The assessee, being aggrieved by the ex-parte order of the CIT (Appeals), Mysore dt.23.7.2018 for Assessment Year 2008-09 has preferred this appeal, wherein he has raised the following grounds :-

1. **The Learned CIT (Appeals) erred in upholding the Order of the Assessing Officer in the manner in which he did.**
2. **The Learned CIT (Appeals) erred in dismissing the appeal of the Assessee on mere technical defect that the Appellant failed to produce the hard Copy of the Original Demand Notice.**
3. **The Learned CIT (Appeals) erred in dismissing the appeal of the appellant on the ground that he had not enclosed the hard copy of the Demand Notice u/s 156 for the AY under dispute and failed to appreciate that once the E-filing was mandated under the law it was sufficient to enclose the scanned copy of the original Demand Notice, which was done by the Appellant.**
4. **The Learned CIT (Appeals) failed to appreciate the fact that as per section 2(23C) of the Act the definition "Hearing" includes communication of Data and documents through electronic mode.**
5. **The Learned CIT(Appeals) ought to have accepted the Demand Notice so communicated to the Appellant electronically by the AO.**
6. **For these and other such grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed.**

4.2 The learned Authorised Representative of the assessee was heard on the grounds raised by the assessee (supra). According to the learned Authorised Representative, the learned CIT (Appeals) grievously erred in dismissing the assessee's appeal on the technical grounds that the assessee failed to produce the hard copy of the original demand notice issued under Section 156 of the Act for Assessment Year 2008-09. According to the learned Authorised Representative, the learned CIT (Appeals) failed to follow the provisions of Sec.2(23C) of the Act wherein

the definition of "Hearing" includes 'communication of data and documents through electronic mode' and therefore once e-filing was mandated under the law, it was sufficient to enclose the served copy of the original demand notice which was followed by the assessee. In this regard, the learned Authorised Representative filed a copy of the acknowledgement for having successfully filed the assessee's appeal for Assessment Year 2008-09 in Form 35 on 15.6.2016, wherein the attachments thereto, inter alia, is 'Notice of Demand'. The learned Authorised Representative further contended that failure on the part of the assessee to enclose the demand of notice with the appeal memo would not render the appeal invalid. In support of this proposition, the learned Authorised Representative placed reliance on the decision of the Hon'ble Allahabad High Court in the case of Addl. CIT Vs. Prem Kumar Rastogi (1978) 115 ITR 503 (All). It was prayed by the learned Authorised Representative that in the light of the above, the impugned order of the learned CIT (Appeals) be set aside and directions issued for the assessee's appeal to be disposed off on merits.

4.3 The learned Departmental Representative for Revenue supported the impugned order of the learned CIT (Appeals).

4.4.1 I have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. From a perusal of the impugned order, it is evident that the same has been passed dismissing the assessee's appeal, ex-parte, in limine for (1) non-prosecution and (ii) for failure to file the original notice of demand under Section 156 of the Act or a certified copy thereof. Therefore, it is clearly evident that the impugned order has been dismissed on the technical grounds referred to above and the grounds raised on merits have not been mentioned, considered or adjudicated.

4.4.2 From an appreciation of the record before me, it is not disputed that the assessee's appeal for Assessment Year 2008-09 in Form No.35 was successfully e-filed on 15.6.2016 and an attachment thereto was the notice of demand; a copy of which has been filed. I have carefully perused the provisions of Sec.249 of the Act (Form of Appeal and Limitation) and Rule 45 of the IT Rules, 1962 [Form of Appeal to

Commissioner (Appeals)] and find that neither makes it incumbent on the assessee to enclose the original Notice of Demand issued under Section 156 of the Act along with the Memo of appeal. Therefore, failure to do so on the part of the assessee, would not render the appeal filed to be invalid; as has been held by the Hon'ble Allahabad High Court in the case of Addl.CIT Vs. Prem Kumar Rastogi (supra). In any case, Revenue has not been able to controvert the fact that, along with the e-filed appeal in Form No.35 for the year under consideration, the assessee has attached thereto a scanned version of the Notice of Demand. In these circumstances, as discussed above, I am of the view that the impugned order of the CIT (Appeals) is not sustainable and is also liable to be set aside as the impugned order is dismissed ex-parte for non-prosecution without disposal of the issues raised by the assessee; on merits. In my considered view, the interest of substantial justice would be met in the case on hand by setting aside the impugned ex-parte order of the CIT (Appeals) and restoring the appeal back to his file for adjudication on the grounds raised by the assessee on the merits of the additions made in the order of assessment. Needless to add, the assessee may be afforded

adequate opportunity of being heard and to file details / submissions required, which shall be duly considered before adjudication of issues raised on merits. It is accordingly ordered.

5. In the result, the assessee's appeal for Assessment Year 2008-09 is 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.