

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

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2598/Bang/2018
Assessment year : 2015-16

Smt. Gangambike, No. B-4, 6 <sup>th</sup> Block, Sir M. Vishweshwaraiah Layout, Ullalu Upanagara, Bangalore – 560 110. <b>PAN : AKWPG 8220 G</b>	Vs.	The Income-tax Officer, Ward – 3[2][3], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Guruprasad B. L, Addl. CIT

Date of hearing	:	08.10.2018
Date of Pronouncement	:	07.12.2018

**ORDER**

This appeal by the assessee is directed against the order of CIT(A)-3, Bangalore dated 20.06.2018 for Assessment Year 2015-16.

**Order on petition for condonation of delay in filing the appeal before the Tribunal**

2.1 Admittedly, there is a delay of 24 days in filing the appeals for Assessment Year 2015-16 before the Tribunal. Along with the appeal, the assessee has filed an application of the aforesaid delay in filing the appeal along with an Affidavit sworn to by the assessee. In the application, the assessee has submitted that the delay of 24

days be condoned as she was prevented by reasonable and sufficient cause in filing this appeal in time due to medical treatment. The averments of the assessee are extracted hereunder:

1. *The Petitioner/Appellant begs to submit that he has filed an Appeal against an Appellate Order dated 20-06-2018 passed by the Learned Commissioner of Income-tax(Appeals)-3, Bangalore with a delay of 24 days.*
2. *The Appellate Order was served on 25-06-2018 and as per the time limit provided under the Act the Appeal ought to have been filed on or 24-08-2018. In this the Appellant submits that she had Womb related gynecological problem for which she was on medical treatment was advised bed rest for a period of 3 weeks. Therefore the Appellant was unable to file the Appeal within the prescribed time limit.*
3. *The delay in filing the Appeal was neither deliberate nor intentional, but bonofide health reasons. Thus the Petitioner/Appellant was prevent by sufficient cause in not filing the Appeal within the time limit.*
4. *In this regard the Appellant begs to place reliance on the decision of the Honourable Jurisdictional High Court order dated 28/10/2011 in the case of ISRO Satellite Centre in ITA No. 532/2008 wherein it was held that in Income Tax matters, delay in filing the Appeal on the part of the Assessee should be condoned irrespective length of delay and the Honourable Jurisdictional ITAT in its order dated 07-08-2015 in ITA No. 1078/Bang/2014 in the case of Glen Williams v/s. ACIT Circle-1(1) has followed the judgment of the Honourable Jurisdictional High Court.*
5. *The Petitioner/Appellant has sworn to the above facts in an Affidavit submitted herewith for kind perusal and consideration.*
6. *Under these facts and circumstances of the case. the Petitioner/Appellant respectfully prays that your Hon'ble Authority be pleased to condone the delay of 24 days which was neither intentional nor deliberate and further be pleased to admit the Appeal for adjudication on merits of the case in the interest of equity and justice or otherwise, the Petition/Appellant would suffer from irreparable loss and denial of justice, on the other hand, the Department would not suffer from any hardship if the Condonation Application is allowed.*

2.2 I have heard the rival contentions and perused and carefully considered the submissions on record in respect of the issue of condonation of the delay of 24 days in filing this appeal before the Tribunal by the assessee. In my view, the reasons of medical treatment of the assessee in the said period as put forth by the assessee in the

application for condonation of delay and the accompanying Affidavit would constitute reasonable and sufficient cause.

2.3 In this context, the Hon'ble Apex Court in the case of MST Katiji & Others (1987) 147 ITR 471 (SC), while laying down the principles for examining petitions for condonation of delay in filing appeals has specified that substantial justice should prevail over technical considerations. It is settled position that while considering "sufficient cause", courts should take a liberal view; especially where it is found that the parties have not acted with malafide intentions and the reasons/explanations put forth are satisfactory. In my view, the explanations / reasons put forward by the assessee for the delay of 24 days in filing this appeal indicates that her action is neither intentional nor deliberate. Keeping in mind the facts of the case on hand on this issue and the principles laid down by the Hon'ble Apex Court in the case of MST Katiji & others (supra); the decision of the Hon'ble Karnataka High Court in the case of ISRO Satellite Centre in ITA No. 532/2008 dated 28.10.2011 and of the co-ordinate bench of the Tribunal in the case of Glen Williams in ITA No. 1078/Bang/2014 dated 07.08.2015, I condone the delay of 24 days in filing this appeal before the Tribunal. Consequently, this appeal is admitted for consideration and disposal.

### **ORDER**

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

3.1 The assessee, engaged in saree business, filed her return of income for Assessment Year 2015-16 on 21.03.2017 declaring total income of Rs.3,12,500/-. The case was selected for scrutiny through CASS for the Assessment Year under consideration and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 26.12.2017, wherein the assessee's income was determined at Rs.15,00,000/-. In coming to this determination of income, the

Assessing Officer ('AO') held that the assessee has not produced any evidence to show that she was engaged in retail saree trade and proceeded to make an addition of Rs.11,87,500/- to the assessee's returned income of Rs.3,12,500/- on account of cash deposited in the assessee's bank account in ICICI Bank on three dates; i.e., Rs.3,50,000/- on 17.11.2014; Rs.2,50,000/- on 16.12.2014 and Rs.9,00,000/- on 16.30.2015.

3.2 Aggrieved by the order of assessment dated 26.12.2017 for Assessment Year 2015-16, the assessee preferred an appeal before the CIT(A)-3, Bangalore. The CIT(A) dismissed the assessee's appeal vide the impugned order dated 20.06.2018 on the ground that the assessee had not produced evidence in support of the claims that she had carried out the business of retail saree trade.

4. The assessee, being aggrieved by the order of CIT(A)-3, Bangalore dated 20.06.2018 for Assessment Year 2015-16, has preferred this appeal, wherein she has raised the following grounds:

1. *The impugned Appellate order dated 20-06-2018 passed by the Learned CIT(A), Bangalore - 3 is opposed to law, facts and circumstances of the case.*

2. *The Ld. CIT(A) has erred in confirming the addition made by the AO amounting to Rs. 11,87,500/- without appreciating the fact that the AO has made two sets of Assessment Order and the First Set of Assessment Order did not consist of the Computation of income and the corresponding tax effect.*

3. *The Ld. CIT(A) has erred in upholding the second set of Assessment Order which was served by him personally to the AR on 11-06-2018 after limitation of time in the course of the Appellate Proceedings.*

4. *The Ld. CIT(A) has erred in confirming the Bank Deposits of Rs. 11,87,500/- u/s. 69A of the Act without appreciating the fact that the AO has not mentioned any of the provision under which the Bank Deposits are chargeable to tax.*

5. *The Ld. CIT(A) has erred in confirming the Cash Deposited Ito the Bank without appreciating the fact that the Bank Deposits per-se do not represent the income.*

6. *The Ld. CIT(A) has erred in confirming the addition of Rs. 11,87,500/- without appreciating the fact that the appellant has filed the return of income u/s.44AD of the Act since no regular books of accounts were maintained and therefore the AO was not justified to hold that there was no retail saree business even though in column 10 of 1<sup>st</sup> Page of the Assessment Order the nature of Business was stated to be Saree Business.*

7. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.*

The learned AR has filed submissions / details in paper book (pages 1 to 37) to buttress the assessee's claims.

5. **Ground Nos. 1 and 7** being general in nature and not urged before us are dismissed as infructuous.

6. **Ground Nos. 2 and 3**

6.1 In the course of hearing of the appeal, the learned AR of the assessee submitted that the assessee is not pressing ground Nos. 2 and 3 raised in this appeal (supra). Therefore, ground Nos. 2 and 3 being not pressed in this appeal are rendered infructuous and are accordingly dismissed.

7. **Ground Nos. 4 to 6**

7.1.1 In support of these grounds (supra), the learned AR of the assessee assails the order of the CIT(A) in upholding the addition of Rs.11,87,500/- u/s 69A of the Act without appreciating the fact that the AO has not mentioned the provision under which the bank deposits are chargeable to tax and that bank deposits per se do not

constitute income u/s 69A of the Act as held by the CIT(A). According to the learned AR, the authorities below failed to appreciate the fact that the assessee had filed her Return of Income for this Assessment Year u/s 44AD of the Act and that the cash deposits represented part of the turnover of the assessee's retail saree business. It was further contended that the assessee has not maintained any regular books of account, since the turnover of the retail saree business was below the prescribed limit as per section 44AD of the Act.

7.1.2 The learned AR submitted that in para 4 of the order of assessment the AO states that a letter dated 30.10.2017 was issued to the assessee requiring her to explain with evidences the source of cash deposits in her ICICI Bank account; which were claimed to be out of retail saree business. It is submitted that the details called for by the AO were submitted by the assessee vide letter dated 09.11.2017; which fact was noted by the AO at para 5 of the order of assessment. It is further argued that the contentions of the authorities below that the assessee had furnished no evidence in this regard is not factually correct as even in column No. 10 of the order of assessment the nature of assessee's business is admittedly acknowledged by the AO as 'saree business'. It is also submitted that the assessee has filed the return of income for Assessment Year 2015-16 (copy placed at pages 11 and 12 of Paper Book) in the prescribed Form:4S which is required to be filed u/s 44AD of the Act as the turnover is less than the prescribed limit.

7.1.3 The learned AR submits that the assessee had made cash deposits of Rs.3,50,000/- on 17.11.2014; Rs.2,50,000/- on 16.12.2014 and Rs.9,00,000/- on 16.03.2015; totaling Rs.15 lakhs in her ICICI Bank account. The same were held to be income from undisclosed sources by the AO, to the extent of Rs.11,87,500/-; after giving credit for income of Rs.3,12,500/- declared in the return of income. It is the contention of the learned AR that the aforesaid cash deposits amounting to Rs.15 lakhs are a part of the assessee's business turnover. Drawing the attention of

the Bench to the copy and details of the assessee's Bank account in ICICI Bank placed at pages 13 to 17 of paper book, the learned AR pointed out that during the year under consideration, the assessee has withdrawn cash amount totaling Rs.29,94,500/- and out of such cash withdrawals the aforesaid cash deposits amounting to Rs.15,00,000/- were deposited/redeposited into the same Bank account which are less than the amount of cash available with the assessee; which facts were completely ignored and brushed aside by the authorities below. It is contended that in these factual circumstances, it cannot be construed that the cash deposits made by the assessee in its ICICI Bank constitute income from undisclosed sources. In support of the proposition that cash deposits do not necessarily constitute income of the assessee u/s 68 of the Act, the learned AR placed reliance, *inter alia*, on the decision of the co-ordinate bench of this Tribunal in the case of Smt. Asha Surendra Kumar Vs. ITO in ITA No. 343/Bang/2017 dated 28.04.2017. The learned AR also assails the action of the CIT(A) in holding that the aforesaid cash credits are exigible to tax as undisclosed investment u/s 69A of the Act as they were out of assessee's business turnover. In respect of the CIT(A)'s contention that the cash credits in the Bank are chargeable u/s 69A of the Act, the learned AR pointed out that these cash deposits are not undisclosed investments but out of business turnover and therefore the provisions of section 69A of the Act is not applicable.

7.2 Per contra, the learned DR for Revenue placed reliance on the findings rendered by the authorities below that the assessee had failed to substantiate the said cash deposits amounting to Rs.15 lakhs. It is submitted that, in the light of the assessee's contentions that the source of cash deposits of Rs.15 lakhs are explained to be out of business turnover and that the authorities below had brushed aside and ignored the fact that the assessee had cash withdrawals amounting to Rs.29,94,500/- during the year under consideration, this issue be set aside to the file of the AO for examination and verification.

7.3.1 The only issue for consideration on merits in this appeal is whether in the facts and circumstances of the case the authorities below erred in holding that cash deposits in the assessee's account with ICICI Bank amounting to Rs.15 lakhs, were from undisclosed sources as held by the AO or as unexplained investments u/s 69A of the Act as held by the CIT(A). The AO noticed that the bank account of the assessee with ICICI Bank had cash deposits amounting to Rs.15 lakhs in the year under consideration (viz., Rs.3,50,000/- on 17.11.2014; Rs.2,50,000/- on 16.12.2014 and Rs.9,00,000/- on 16.303.2015). On being queried in this regard, the assessee submitted explanations before the AO that these cash deposits were out of her business of trading in sarees from home. The authorities below rejected the assessee's explanations on the grounds that the assessee failed to provide evidence to show that these cash deposits were out of the retail saree business stated to have been carried on.

7.3.2 The ICICI Bank account of the assessee, the examination of which by the AO resulted in the observation (details supra) that cash deposits amounting to Rs.15 lakhs were made therein in the year under consideration and subsequently led to the additions to the assessee's income; was also perused by me. From a perusal thereof, I find that in the year under consideration, there have been cash withdrawals amounting to Rs.29,94,500/- and cash credits therein have totally been Rs.15 lakhs. As contended by the learned AR of the assessee, the cash credits are much less than the cash withdrawals in the relevant period and are apparently the source of the said cash deposits which have been deposited in the bank in accounts totaling Rs. 15 lakhs depending on the exigencies of business. In the light of the factual matrix of the case, as discussed above, I am of the considered opinion that cash deposits in the Bank account cannot be automatically construed to be income exigible to the tax from undisclosed sources or u/s 69A of the Act. The facts and circumstances on record, from an appraisal of the assessee's ICICI Bank account in the case on hand, indicate that the said cash deposits of Rs. 15 lakhs apparently are made out of cash

withdrawals of Rs.29,94,500/- during the year under consideration, and re-deposited in the Bank account depending on the exigencies of assessee's business. Before me, Revenue was not able to controvert this argument/contention of the assessee and I am, therefore, of the view that in this factual matrix of the case, the addition of cash deposits of Rs.11,87,500/- made by the AO as income from undisclosed sources and upheld by the learned CIT(A) as unexplained investment u/s 69A of the Act is factually unsustainable and therefore delete the same. I hold and direct the AO accordingly.

8. In the result, the assessee's appeal for assessment year 2015-16 is partly allowed.

*Order pronounced in the open court on this 7<sup>th</sup> day of December, 2018.*

Sd/-

**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 7<sup>th</sup> December, 2018.

/NS/\*

Copy to:

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|---------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT        | 4. CIT(A)     |
| 5. DR         | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.