

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.2047/Bang/2018
Assessment Year : 2005-06

Shri B.A. Prashanth, Prop. B.K. Narayana Setty & Son, A.P.M.C. Yard, Arasikere. PAN: AHNPP9956G	vs.	The Income Tax Officer, Ward – 2, Hassan.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R. Vasudevan, Advocate
Respondent by	:	Shri R.N. Siddappaji, Addl. CIT (DR)

Date of hearing	:	28.02.2019
Date of Pronouncement	:	28.02.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A), Mysore dated 28.02.2018 for Assessment Year 2005-06.

2. The grounds raised by the assessee are as under.

“1. The order of Learned CIT (Appeals) is erroneous, both on facts and on law.

2. The Learned CIT(Appeals) erred in not granting adequate opportunity to the Appellant and adjudicating on this issue, ex-parte, after issue of one notice only.

3. The Learned CIT(Appeals) erred in not appreciating that the addition to Income were made based on the details furnished by the assessee and therefore levy of penalty on such additions is untenable.

4. The Ld. CIT(A) erred in not appreciating that the additions to Income towards Sundry Creditors were made only because appellant could not produce them in person, thereby ignoring the fact that confirmation letters had been filed and which had been accepted by

the A.O in the original assessment proceedings.

5. The Learned CIT(Appeal) erred in not appreciating that the additional Income assessed did not result in concealment of Income as the addition was made only because of Non-production of Sundry Creditors.

6. The Ld. CIT(A) has erred in not appreciating that assessment proceedings are different from penalty proceedings and the addition made due to non-production of sunder creditors cannot be a reason for automatic levy of penalty.

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

For these and such other reasons that may be urged at the time of hearing, it is respectfully prayed that the Hon'ble Tribunal be pleased to pass orders granting such relief as it may deem fit in the interest of equity and justice.”

3. At the very outset, it was submitted by Id. AR of assessee that the impugned order of CIT (A) is ex-parte qua the assessee. He submitted that on page no. 1 of the impugned order, it is noted by CIT (A) that two dates of hearing were fixed by him on 27.05.2015 and 04.01.2018 although the appeal was filed by the assessee on 29.07.2011. He submitted that the notice regarding fixation of appeal for hearing on 27.05.2015 was never served on the assessee. Regarding the notice for fixation of the hearing of the appeal by CIT (A) on 04.01.2018, he submitted that in reply to this notice, the assessee has filed an application before CIT (A) seeking adjournment. He submitted a copy of this notice dated 23.12.2017 issued by the CIT(A) fixing the date of hearing on 04.01.2018 at 02:30 pm and of the reply dated 03.01.2018 filed in the office of the CIT(A) on 04.01.2018 in which the assessee has requested for adjournment. He submitted that in spite of this request of the assessee for adjournment, Id. CIT (A) has passed the impugned order on 28.02.2018 without providing any further opportunity to assessee. He submitted that under these facts, the matter should be restored back to the file of CIT (A) for fresh decision after providing reasonable opportunity of being heard to assessee. The Id. DR of revenue supported the order of CIT(A).

4. We have considered the rival submissions. We find force in the arguments of Id. AR of assessee because we find that the assessee has requested for adjournment on 04.01.2018 and although the impugned order was passed by CIT (A) on 28.02.2018 i.e. after more than one and half month from the date of seeking adjournment, no further opportunity was granted by CIT(A) to the assessee. Hence we feel it proper to set aside the order of CIT (A) and restore the matter back to his file for fresh decision after providing adequate opportunity of being heard to both sides. We order accordingly. In view of this decision, no adjudication on merit is called for at the present stage.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th February, 2019.
/MS/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.