

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” BENCH: HYDERABAD

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA. No.1920/Hyd/2017 (Assessment Year: 2014-15)

Sri Bhavani Constructions, Hyderabad. PAN: AATFS 1570 L (Appellant)	vs.	Income Tax Officer, Ward-11(5), Hyderabad. (Respondent)
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For Assessee:	Shri K. Chaitanya Kumar
For Revenue :	Shri Rajeev Benjwal, DR

Date of Hearing :	07.03.2019
Date of Pronouncement :	15.03.2019

ORDER

PER V. DURGA RAO, JM.

This appeal filed by the assessee is directed against the order of the CIT(A)-5, dated 31/08/2017 for the assessment year 2014-15. The assessee has raised the following grounds of appeal:-

- “1. *The order of the Ld. CIT(A) is erroneous both on facts and in law.*
2. *The Ld. CIT(A) erred in passing an order without giving any opportunity.*
3. *The Ld. CIT(A) erred in confirming the action of the Assessing Officer in rejecting the books of account and further erred in estimating the income @ 12% on Rs. 1,19,50,000/-.*
4. *The Ld. CIT(A) ought to have considered the fact that the same receipts were admitted in subsequent assessment year i.e., A.Y. 2015-16 without considering the appellant submissions.*
5. *The Ld. CIT(A) erred in confirming the action of the Assessing Officer in determining the total income at Rs.*

8,74,000/- as against the income admitted of Rs. 2,12,000/-.”

2. At the outset, Learned Counsel for the Assessee bringing our attention to the affidavit filed by the assessee regarding condonation of delay, he submitted that there is a delay of 10 days in filing the appeal before the Tribunal within the prescribed time limit. Explaining the reasons for such delay, Learned Counsel for the Assessee submitted that even though the appeal papers and the relevant Forms were signed by the Managing Partner and fees was also paid, the same was noticed at the auditors office only and therefore, the delay caused which is beyond the control of the assessee and the delay is not an intentional. On perusal of the contents of the affidavit filed by the assessee as well as the submissions made by the Learned Counsel for the Assessee, we find there is a reasonable cause for not filing the appeal within the stipulated time and therefore considering the same we condone the delay and proceed to adjudicate the appeal on merits.

3. So far as the merits of the case is concerned, when the appeal is taken up for hearing, Learned Counsel for the Assessee briefly narrated the facts of the case that the assessee is engaged in the business of civil and labour contracts filed the return of income admitting total income of Rs. 2,12,000/- u/s 44AD of the IT Act, 1961. The case was selected for scrutiny under CASS. During the scrutiny proceedings, the A.O. noticed that the as per 26AS the receipts from contract shows at Rs.

1,19,50,000/- for the A.Y. 2014-15 whereas the assessee has shown Rs. 96,50,000/- in its computation and the balance of Rs. 23,00,000/- claimed to have been shown for subsequent years and the assessee has admitted the profit on presumptive basis u/s 44AD of the Act. Before the A.O., the assessee could not explain for shifting the receipt to the subsequent years. Accordingly, A.O. consider the total receipts / turnover at Rs. 1,19,50,000/- as per Form 26AS and estimated the assessee's @ 12% of total gross receipts which worked out to Rs. 14,34,000/- and the same was added back to the total income of the assessee.

4. Aggrieved, assessee carried the matter in appeal before the CIT(A). Considering no representation on behalf of the assessee at the time of hearing, CIT(A) passed ex-part order and dismissed the appeal. Aggrieved, the assessee is in appeal before us.

5. Before us, Learned Counsel for the Assessee filed a paper book (pages 1 to 15) consisting computation of total income and final accounts for the A.Y. 2015-16, reconciliation statement with regard to turnover and other relevant material and submitted that the same may be considered which supports the claim made by the assessee and requested that the assessee may be granted one more opportunity to present its case before the CIT(A).

6. On the other hand, Learned Departmental Representative submitted that whatever the relevant documentary evidence the assessee ought to have produced before the CIT(A) besides the assessee has not appeared before the first appellate authority and therefore, the assessee's request may not be considered.

7. We have heard both the parties and perused the material available on record as well as the paper book filed before us. We find that though the CIT(A) has given sufficient opportunity to the assessee and also discussed the issues on merits, the appeal is dismissed ex-parte. Now the assessee has filed some details to substantiate its case. Therefore, considering the above facts and circumstances of the case, we are of the considered view that the assessee should be given one more opportunity in the interest of justice and accordingly we remit the matter back to the file of the CIT(A) with a direction to adjudicate the issue afresh after considering the submissions made before the Tribunal and affording a reasonable opportunity of being heard to the assessee in accordance with law. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th March, 2019.

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Sd/-

**(V. DURGA RAO)
JUDICIAL MEMBER**

Hyderabad, Dated: 15th March, 2019.

OKK, Sr.PS

Copy to

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2.	Income Tax Officer, Ward-11(5), Hyderabad.
3.	CIT(A)-5, Hyderabad.
4.	Pr. CIT-5, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File