

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BANGALORE**

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.2023/Bang/2018
Assessment Year : 2008-09

AAF INDIA PRIVATE LIMITED
No.117 & 118, Bommasandra,
Jigani Link Road, KIADB,
Anekal Taluk, Bengaluru – 560 105.
PAN : AAFCA 4502R

.. Appellant

v.

The Deputy Commissioner of Income Tax,
[formerly Circle-(11)(1)],
Bengaluru - 560 095.

Assessee by : Shri Narendra Sharma, Advocate
Revenue by : Shri. R. N. Siddappaji, Addl. CIT(DR),
ITAT, Bengaluru.

Date of hearing : 30.4.2019
Date of pronouncement : 30.4.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the Revenue against the order of the CIT (A)-1, Bengaluru, dated Nil, for the assessment year 2008-09 on the following effective ground No 3 :-

“3. The ex parte order passed by the learned Commissioner of Income Tax (Appeals) Bangalore is bad in law as the appellant was

not afforded a reasonable opportunity of hearing, which is in grave violation of principle of natural Justice, on the facts and circumstances of the case.

2. The assessee company, a private company filed return of income for the assessment year 2008-09 declaring a loss of Rupees 2,37,65,062/-. Return was selected for scrutiny and the AO completed the assessment under section 143 (3) of the Income-Tax Act, 1961 [“the Act”] by making certain additions.

3. Feeling aggrieved by the order passed by the AO , the assessee filed an appeal before the CIT(A). The appeal was instituted on 14th February 2014, however the same was required to be preferred on or before 5th January 2014. As there was delay in filing the appeal, the matter was posted on 29/01/2015. However, on the said date the Id. AR of the assessee had filed an application for adjournment and the matter was adjourned to 16/02/2015. Again on 16/02/2015, the Id. AR for the assessee had sought an adjournment and the matter was adjourned to 16/03/2015. As none appeared on behalf of the assessee, the CIT(A) had decided the matter based on the material available on record by proceeding *ex parte* against the assessee.

4. The assessee contends that the CIT(A) was not justified in disposing of the appeal of the assessee without condoning the delay in filing the appeal on the technical grounds. It was contended before us that the assessee had undertaken the services of a good professional in appeal against the assessment order and all actions are required to be taken by the chartered accountant.

5. The learned AR was heard, who reiterated the submissions as put forth in the statement of facts forming part of the appeal. It is further

submitted that the ultimate object of assessment being that the correct income of the assessee be brought to tax, in this context it is prayed by the learned AR that the impugned order of the CIT(A) be set aside and matter restored to file of CIT(A) for hearing and adjudication on merits.

6. Per contra, the learned DR for Revenue supported the orders of the authorities below.

7. We have heard and carefully considered the rival submissions put forth by both learned DR for Revenue and the learned AR of the assessee. A perusal of the impugned order confirms the fact that the CIT(A) dismissed the assessee's appeal for delay in filing the appeal before the him. It is seen that the appeal was filed before CIT(A)-I, Bangalore and the assessee did attend the hearings on various occasions, though it had sought adjournments. The assessee had shown the reasonable cause for not filing the appeal before the Commissioner within the statutory period as provided by Act and therefore the order of the Commissioner dismissing the condonation of delay application is without any merit. In fact it was incumbent upon the Commissioner to examine the facts brought on by the assessee in support of not furnishing the appeal within the statutory period and pass reasoned order in this regard. The Commissioner without doing the needful had dismissed the appeal as preferred by the assessee merely relying upon some judicial pronouncement by the Hon'ble Supreme Court and also on the basis of general observations. It is a settled proposition of law that the judgments of the Hon'ble Supreme Court in various pronouncement is required to be followed on the basis of the ratio laid down in the said judgements in the facts of those cases decided by the court and should not be followed as a statute without looking into the facts of the case. Taking into account the facts of the matter and in the interest of substantial justice, we are inclined to concur with this plea of assessee,

as it is highly unlikely that the assessee would intentionally or deliberately not prefer the appeal before the CIT(A); as this would cause immense harm to his own interests. Admittedly, the assessee's appeal has not been disposed of by adjudication of the issues on merits raised before the CIT(A). Since the ultimate aim of the assessment is that only the correct taxes due by the assessee be collected by Revenue, in our view, it is imperative that the assessee's appeal before the CIT(A) be heard and disposed of on merits.

8. In this view of the matter, we are of the considered opinion that the interest of substantial justice will be well served if the impugned order of the CIT(A) dated 26.4. 2018 for Assessment Year 2008-2009 be set aside and delay in filing the appeal before the Commissioner is condoned. We, therefore, set aside the aforesaid impugned order of the CIT(A) and restore the matter to his file for fresh hearing, examination and adjudication of the issues raised by the assessee in the appeal before him. Needless to add, the CIT(A) shall afford the assessee adequate opportunity of being heard and to file details/submissions required, which shall be duly considered before deciding the issues. The assessee is also directed to comply with and attend the hearings before the CIT(A). We hold and direct accordingly. Consequently, ground No. 3 is allowed.

9. As we are remanding back the entire matter to the file of the Commissioner for a fresh adjudication, after condoning the delay in filing the appeal, hence no other grounds raised in the present appeal has been adjudicated by the Tribunal.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 30th day of April, 2019.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru,
Dated, the 30th April, 2019.

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.