

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.312/Bang/2019
Assessment year : 2014-15

Shri. Vimal Kumar Ranka, Bhanwar Apartments, No.307, 2 nd Floor, 10 th Cross, Near Agadi Hospital, Wilson Garden, Bangalore-560 027. PAN : AFGPR 5220 L	Vs.	The Income Tax Officer, Ward – 7(2)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Suman Lunkar, CA
Revenue by	:	Shri. S. T. Seshadri, JCIT

Date of hearing	:	15.04.2019
Date of Pronouncement	:	24.05.2019

ORDER

This appeal by the assessee is directed against the ex-parte order of CIT(A)-7, Bangalore, dated 14.11.2018 for Assessment Year 2014-15.

2. In this appeal, the assessee has raised the following grounds:

1. *The learned Assessing officer had erred in passing the order in the manner passed by him and the learned Commissioner of Income Tax (Appeal) has by the impugned order erred in dismissing the appeal filed by the appellant.*

2. *The learned CIT (A) has erred in holding that the appellant had failed to give sufficient reason for the substantial delay in filing of appeal and consequently dismissing the appeal treating the appeal filed as invalid. The appellant having sufficient cause for delay in filing the appeal. The learned Commissioner of Income tax (A) should have condoned the delay and admitted the appeal filed for having on merits.*
3. *The order passed by Assessing Officer was bad in law for want of application of principles of natural justice and for want of compliance of legal requirements, required in quasi judicial proceedings and therefore the learned CIT (A) should have quashed the order instead of confirming the same.*
4. *In any case, the lower authorities have erred in holding that the provisions of section 68 of the Act are applicable in the case of the appellant in respect of sum of Rs. 36,95,270/-. On the facts of the case and the law applicable there being no unexplained cash credit, the additions made U/s 68 of the Act being bad in law is liable to be deleted.*
5. *The lower authorities have not properly appreciated the facts of the case and law applicable. On the other hand lower authorities have been guided with extraneous and non relevant material in making the impugned assessment and appellate order. On the appreciation of the facts and law applicable, the addition as made has no basis to stand and is liable to be deleted in toto.*
6. *The action of the lower authorities in holding the transaction in shares to be non genuine is not based on facts and law and the conclusion based on such irrelevant facts is to be quashed.*
7. *The appellant denies liability to pay interest u/s 234A, 234B and 234C. The interests being levied erroneously is to be deleted.*
8. *In view of the above and on other grounds to be adduced at the time of hearing, it is requested that order passed by AO and CIT (A) to be quashed or at least the addition as made be deleted and interest levied be also deleted.*

3. Ground No.2 – Non condonation of delay in filing appeal before CIT(A).

3.1 At the outset, the learned AR for the assessee submitted that there was a delay of 155 days in filing the appeal before the CIT(A)-7, Bangalore. It is

submitted that a petition for condonation of delay dated 30.06.2017 along with an Affidavit sworn to by the assessee dated 30.06.2017 was filed by the assessee along with the appeal, praying that the delay be condoned in keeping with the principles laid down by the Hon'ble Apex Court in MST Katiji and Others (1987) 167 ITR 471 (SC). The reasons for delay in filing this appeal have been explained in the petition at paras 1 to 5 thereof, which are as under:-

- *The petitioner had received an order passed U/s. 143(3) of the I.T. Act, 1961 dated 24.12.2016 received on 31.12.16 for the Assessment Year 2014-15.*
- *In the normal course, the appeal against the above order before the Commissioner of Income tax (Appeals) - 7, Bengaluru should have been filed within 30 days of receipt of Intimation i.e., by 23.01.2017.*
- *The petitioner is a partner in a firm styled as Rock & Stones having 50% profit sharing ratio. The petitioner is one of the partner in the aforesaid firm along with Sri Karan Bindal. Unfortunately during the year under appeal, there arose a dispute regarding share of profit, the running of business of the firm etc between the partners of the firm. This lead to tension and several arguments over several days and months. Ultimately Sri Karan Bindal released himself from the firm vide Release deed dated 31.03.2017. After the things cooled down and were sorted out, the petitioner was also mulling over filing writ petition.*
- *Thereafter, after consulting several consultants it was decided to file an appeal and immediately arrangement is made to file an appeal.*
- *An affidavit to this effect is enclosed.*

3.2 The learned DR for Revenue opposed the assessee's plan for condonation of delay.

3.3 I have heard and considered the rival contentions and the material on record in respect of the matter of non-condonation of delay of 155 days in filing the appeal before the CIT(A)-7, Bangalore. It is apparent that the CIT(A) has not adjudicated the assessee's appeal on merits, but dismissed it, *in limine*, by not condoning the delay in filing the appeal. The ultimate object of assessment proceedings is that the true and correct income of the assessee be brought to tax. In the case on hand, the assessment for Assessment Year 2014-15 has resulted in demand of Rs.36.95 lakhs being raised with which the assessee is aggrieved. Therefore, it is very unlikely that the assessee would have deliberately or intentionally filed the appeal for Assessment Year 2014-15 belatedly; more so when he is saddled with huge tax demand of Rs.36.95 lakhs. Taking into account the principles laid down by the Hon'ble Apex Court in the case of MST Katiji and Others (supra), wherein the Hon'ble Apex Court laid down the principles for dealing with matters relating to condonation of delay, and the reasons of business disputes in the firm in which the assessee is a partner, I am of the view that the assessee was prevented by reasonable and sufficient cause from filing the appeal for Assessment Year 2014-15 on time before the CIT(A)-7, Bangalore. In this view of the matter and respectfully following the principles laid down by the Hon'ble Apex Court in the case of MST Katiji and Others (supra), I condone the delay of 155 days by the assessee in filing the appeal before the CIT(A). Since it is evident that the assessee's appeal has only been dismissed by the CIT(A) on technical grounds; on the issue of non-condonation of delay in filing the appeal; and not adjudicated the merits of the issues raised in the appeal before him, the impugned order of CIT(A)-7, Bangalore dated 14.11.2018 for Assessment Year 2014-15 is set aside and the matter is restored to the file of the CIT(A) for adjudication on merits after affording the assessee adequate

opportunity of being heard and to file submissions / details required which shall be duly considered before deciding the appeal. It is accordingly ordered. Consequently, the other grounds raised on merits in this appeal (supra) are not required to be adjudicated at this stage.

4. In the result, the assessee's appeal for Assessment Year 2014-15 is allowed for statistical purposes.

Order pronounced in the open court on this 24th day of May, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.
Dated: 24th May, 2019.
/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.