

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.1715/Bang/2018  
(Assessment Year: 2011-12)

M/s. Hemavathi Sahakara Sakkare Kharkhane Ltd., Srinivasapura, Holenarsipura Road, Channarayapatna Taluk, Hassan District. PAN AAAAH 2261H (Appellant)	Vs.	Jt. Commissioner of Income Tax, Hassan Range, Hassan. (Respondent)
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Assessee By:	Shri Lokesh Jain, C.A.
Revenue By:	Dr. P. V. Pradeep Kumar, Addl.CIT.

Date of Hearing :	03.07.2019
Date of Pronouncement :	15.07.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals), Mysore passed u/s. 271(1)(c) and u/s 250 of the Income Tax Act, 1961.

2. The assessee has raised the grounds of appeal challenging Notice under Section 274 of the Act invoking penalty under Section 271(1)(c) of the Act and

learned CIT (Appeals) has passed the order without sufficient and reasonable opportunity.

3. The Brief facts of the case are that the assessee is a co-operative society engaged in leasing of building and plant and machinery of sugar factory and filed the Return of Income on 27.08.2012 with total income NIL and subsequently filed the revised Return of Income on 2.9.2013 with income of Rs.2,16,49,480. The case was selected for scrutiny and A.O. issued Notice under Section 143(2) and 142(1) of the Act. The learned Authorised Representative appeared before the Assessing Officer from time to time and furnished details. The Assessing Officer found that the assessee society leased out machinery to sugar factory and the submissions were made on these aspects and on claim of depreciation. Whereas the Assessing Officer found that the assessee has claimed set off of brought forward losses of earlier years which is not clear hence made a disallowance of depreciation of Rs.15,640 and assessed the total income of Rs.2,78,44,490 and passed order under Section 143(3) of the Act Dt.26.3.2014. Subsequently, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act and levied penalty by order Dt.18.9.2014. Aggrieved by the penalty order under Section 271(1)(c) of the Act, the assessee filed an appeal with the CIT (Appeals). In the appellate proceedings, the learned CIT (Appeals) has issued notice and since none appeared on behalf of the assessee, the assessee's appeal was decided ex parte

and dismissed. Aggrieved by the CIT (Appeals) order, the assessee has filed appeal with the Tribunal.

4. The learned Authorised Representative submitted that the CIT (Appeals) has erred in dismissing the assessee's appeal *ex parte* and only one date of hearing was provided to the assessee. Hence learned Authorised Representative prayed that one more opportunity be provided before the CIT (Appeals) to submit all the details and explanations. Contra, the learned Departmental Representative objected to the submissions of the learned Authorised Representative and supported the order of CIT (Appeals).

5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is in respect of *ex parte* order by the CIT (Appeals) confirming the levy of penalty. The learned Authorised Representative's contention that the CIT (Appeals) has granted only one date of hearing and since none appeared on the said date, CIT (Appeals) has dismissed the assessee's appeal. The learned Authorised Representative emphasized that the assessee has *prima facie* good case and prayed for one opportunity before the CIT (Appeals). We, considering the principles of natural justice and the reasons envisaged by learned AR consider it appropriate to provide one more opportunity to the assessee and the Revenue shall not be at a loss. Accordingly, we restore the entire disputed issue to

the file of the CIT(A) to adjudicate afresh on merits by speaking order. It is nevertheless to mention that the CIT(A) should provide adequate opportunity to the assessee to substantiate with evidences and also the assessee shall co-operate in submitting the information expeditiously for early disposal of the appeal and allow the grounds of appeal of assessee for statistical purposes.

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

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

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**  
Dated: 15.07.2019.

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore