

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

Appeal No	Assessee	Department	A.Y
1894/Hyd/2014	Boddam Kapil Hyderabad PAN: AISP8074D	ITO Ward-8(2) Hyderabad	2006-07
1895/Hyd/2014	ITO Ward-8(2) Hyderabad	Boddam Kapil Hyderabad PAN: AJSP8074D	2007-08
1896/Hyd/2014	-do-	Boddam Janga Rao Hyderabad PAN:AHTPB1148P	2006-07
1897/Hyd/2014	-do-	-do-	2007-08
1379/Hyd/2018	Boddam Kapil Hyderabad	ITO Ward 8(2) Hyderabad	2006-07
1380/Hyd/2018	-do-	-do-	2007-08
1381/Hyd/2018	Boddam Janga Rao, Hyderabad PAN: AHTPB1418P	-do-	2006-07
1382/Hyd/2018	-do-	-do-	2007-08

For Revenue : Shri Y.V.S.T. Sai, CIT(DR)
For Assessee: Shri K.A. Sai Prasad

Date of Hearing: 25.07.2019
Date of Pronouncement: 31.07.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

All these appeals are the cross appeals for the A.Ys 2006-07 and 2007-08 in the case of both the assesseees. The assessee Shri Boddam Janga Rao is the father of the assessee Shri Boddam Kapil and since similar issues are involved in the appeals of both the assesseees, they were heard together and are being disposed of by this common and consolidated order.

2. The Revenue's appeals are filed in the year 2014, whereas the assessee's appeals are filed in the year 2018 with a delay of 1279 days. The assessee Shri Boddam Kapil has filed the following affidavit for condonation of delay:

"I Boddam Kapildev S/o. Sri Janga Rao aged 39 years, R/o. D.No.23-42, Jangarao Complex, Shamshabad presently staying at H.No.3-54, Peddashapore Village, Shamshabad Mandal, R.R.District do hereby solemnly state as under.

I am an individual. Myself alongwith 5 members of our family, and 3 other outsiders carried on real estate business of purchases & selling lands. In each venture shares of the co-owners varied depending upon the investment our family of 6 members constituted as one group having mostly 16.66% share. My father and others had other sharers. The lands were purchased on agreements/ sale deed paying some advances and were sold to purchases earning some profit/commission. Operations u/s 133A were conducted on 21.02.2008 at my business premises and certain papers, note-books were impounded. The note books contained the details of business transactions done.

I approached one chartered accountant to represent my case and myself appeared before the Assessing Officer more than 5 times and to the best of my knowledge more than 2 statements were recorded on oath. I explained that the transactions were carried out as group as indicated in the impounded material. I also explained that the entire agreed amount was paid in instalments and that some of the instalments were out of the advances received by our group from prospective purchasers.

The Assessing Officer made several additions towards, unexplained investment, unexplain cash deposits in Bank A/c and undisclosed business income. Some part of the income was assessed on protective basis and the balance on substantive basis.

Aggrieved by additions I preferred appeal through an advocate / tax consultant at Hyderabad referred to by my well-wisher at Shamshabad.

The orders of the First Appellate Authority were received on 29.10.2014. Immediately I approached the said tax consultant who informed that the Commissioner of Income Tax confirmed majority of the additions and gave partial relief. He advised me to file second appeal and I gave my consent and signed certain papers.

Subsequently I received notice from income tax tribunal through Assessing Officer and when I contacted the said consultant he expressed that he would not represent my case.

On 04.09.2017, accordingly, I appeared before the Tribunal and explained my difficulties regarding inability to engage any counsel. The Hon'ble Income Tax Appellate Tribunal was kind enough to appoint K.A Sai Prasad to represent my case. On his advice I approached the office of the previous counsel, got the files and handed over the same to him.

After a lapse of some time, he called me to inform that against the additions sustained by Commissioner of Income Tax no appeals were filed from my side for Asst.Years 2006-07 & 2007-08 and that the appeals pending before Income Tax Appellate Tribunal were all filed by department only.

I once again approached the office of the earlier counsel and after verification they informed that all the relevant papers were already handed over to me. This fact was informed to K.A Sai Prasad. He after verification of all the records once again confirmed that the relevant appeal were not filed and said that he would get the information verified in the Income Tax Appellate Tribunal office.

After some more day he finally confirmed that no appeals were filed from my side and advised me to file the same with a delay. He had also informed that an appeal for A Y.200809 was filed already and since the vakalat was withdrawn by earlier counsel the same was dismissed on 30.03.2016 by Hon'ble Income Tax Appellate Tribunal.

The said appeals in ITA No. 1379/Hyd/18 & 1380/Hyd/18 for AYs.2006-07 and 2007-08 respectively were filed on 29.06.2018 with a delay of 1279 days.

My father Boddam Janga Rao who is also involved in this business and whose appeals are pending before Income Tax Appellate Tribunal was diagnosed with kidney ailment 3 years back due high sugar levels and was under regular treatment. Being the elder of the two sons I had to attend to his medical needs on regular basis and finally my father is on dialysis 3 times a week from December 2019.

Part of the delay in filing the appeals is on account of my father's ill health.

Due to disputes with the amount co-owners, I lost heavily and had to close the family business carried on earlier. I had to settle down for the last 6 years as an academic incharge in Sri Narayana Junior college, run by Sri Mayuri education society earning a salary of Rs.18,000 at present.

I am an undergraduate having failed intermediate exam. Now I am pursuing degree with Ambedkar Open University. I have very little knowledge of the income tax proceedings especially the appeal proceedings. I once again submit that the delay in filing the above appeals is lack of knowledge and information as explained in detail above.

I affirm that whatever stated above is true to the best of my knowledge and belief".

3. The learned Counsel for the assessee, while reiterating the above submissions stated that the fact that the appeal for one A.Y, i.e., 2008-09 was filed on time by the earlier Counsel when the appeals for all the A.Ys were disposed by the CIT (A), goes to prove that the assessee had requested the Counsel to file appeals for all the three years, but due to some reason, the Counsel failed to do so, for which he should not be punished. He, therefore, prayed for condonation of delay and to dispose of the appeals on merits. The learned DR however, opposed the condonation of delay. We have verified the docket entries in ITA

No.1894/Hyd/2014, wherein vide entry dated 4.9.2017, the Tribunal has recorded as under:

“ITA NOs:1894 to 1897/H/2014 Date: 04.09.2017

Note

In this appeal, none appeared on behalf of the assessee. Finally, when the notice was served through the DR, Shri B. Kapil appeared and stated that he is the assessee in one of the cases and both he and his brothers are not in a position to engage any Counsel. Very arbitrarily high demand was raised in these cases and hence the appeal has to be considered judiciously at this stage. However, being a party in person, he was unable to explain the facts correctly. Since the Bench is unable to appreciate the contentions without proper assistance we deem it a fit case to request Sri K.A. Sai Prasad, CA as amicus curiae who in turn gracefully accepted the decision of the Bench. A reasonable fee would be fixed later on considering the gravity of the issue and the assessee agreed to pay such sum to the amicus curiae. Case is accordingly adjourned to 21.12.2017”.

*Sd/-
AM
IRR*

*Sd/-
VP
DMM*

4. Reading the contentions in the condone delay petition, in conjunction with the above docket order and taking the same into consideration, due to the peculiar circumstances of the case, we are convinced that the delay of 1279 days in this case is not willful or wanton but is due to reasons beyond the control of the assessee. Therefore, we condone the delay in filing of the appeals by the respective assessees. However, we make it clear that this decision shall not be treated as a precedent for condoning such long delay in other cases and each case has to be considered on the facts of such case only.

5. Coming to the merits of the case, the learned Counsel for the assessee submitted that there was a search operation u/s

133A of the Act on 21.2.2008 in Boddam Group cases. The assessee Shri Boddam Kapil, had filed his returns of income for the A.Y 2006-07 on 15.06.2006 admitting an income of Rs.1,09,520/- and agricultural income of Rs.50,000/-. Consequent to the survey operation, the AO issued a notice u/s 148 of the Act to the assessee on 15.06.2010 and the assessee was required to explain the various entries made in the diary found at the time of survey. The assessee did not furnish any information and therefore, the AO completed the assessment ex-parte u/s 144 r.w.s. 147 of the Act and determined the total income at Rs.4,15,56,655/- and agricultural income at Rs.50,000/-. Aggrieved, the assessee preferred an appeal before the CIT (A), who granted partial relief to the assessee and against the relief given by the CIT (A), the Revenue is in appeal before us and against the additions confirmed by the CIT (A), the assessee is in appeal before us.

6. In the Revenue's appeal, the main ground is that the CIT (A) has granted relief to the assessee by admitting additional evidence without giving the AO an opportunity under Rule 46A of the I.T Rules, whereas in the appeal of the assessee, the grievance of the assessee is that the AO has made very high additions on the basis of the entries of payments found in the diary without taking into consideration the entries of receipts of payments of the assessee. He submitted that the assessee is into real estate business and has accordingly entered into various transactions with others as is evident from the entries of the diary. He submitted that the assessee was also a shareholder and had initially paid a sum as advance and later on, on receipt of

advances from the customers, the balance of the amounts were paid to the vendors. He submitted that the AO has taken the whole of the amount of payments only as the assessee's unexplained investment but failed to consider the entries of receipts of advances customers. He submitted that the AO has considered only such entries which are favourable to the Revenue.

7. The learned DR, however, submitted that the assessee has filed some of the details before the CIT (A) and the CIT (A) without proper verification of the same, and without affidavit offering the AO any opportunity to verify the same has deleted the major part of the addition. He therefore, prayed that the issue may be remitted to the file of the CIT (A) for reverification of the issue.

8. Having regard to the rival contentions and the material on record and also having gone through the records, we find that the diary found during the course of survey is the incriminating document on the basis of which the additions have been made by the AO. On perusal of the same, we find that there are entries of payments as well as receipts. Further, the assessee's share is also mentioned therein, whereas the AO has taken the entire payment as payment made by the assessee alone. To this point, the learned DR had submitted that the assessee has failed to produce the other parties and therefore, the entire addition had to be made in the hands of the assessee alone. We find that since the diary was found from the premises of the assessee, the onus is on the assessee to explain the entries in the diaries. If he claims that the

payments are made by some other parties, the assessee is required to produce such parties before the AO, failing which, the AO is constrained to make entire addition in the hands of the assessee alone. Therefore, we deem it fit and proper to remand the issue to the file of the AO with a direction to consider the entries in the diary as a whole, and if there are any receipts by the assessee, then the same should also be telescoped against unexplained investments. Thus, appeals of both the assessees as well as the Revenue are remitted to the file of the AO for de novo consideration in accordance with law. Needless to mention that the assessee shall be given a fair opportunity of hearing. Thus, all the appeals are treated as allowed for statistical purposes.

9. In the result, appeals of both the Revenue and Assesseees are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 31st July, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 31st July, 2019.

Vinodan/sps

Copy to:

- 1 ITO Ward 8(2), 8th Floor, D Block, IT Towers, Masab Tank, Hyderabad
- 2 S/Shri Boddam Kapil/Boddam Janga Rao, D. No.23-42, Jangarao Complex, Shamshabad, RR Distt. Hyderabad
- 3 CIT (A)-Vijayawada
- 4 CIT – II Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order