

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER**

ITA No.2594/Bang/2018
Assessment Years : 2010-11

Shri. J. T. Satish Chandra, No.506, 4 th Main, 11 th Cross, WOC Road, 2 nd Stage, Mahalakshmpuram, Bengaluru – 560 086. PAN : BKGPS 3154 Q	Vs.	The Income-Tax Officer, Ward – 6(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. H. Guruswamy, ITP
Revenue by	:	Shri. Vikas Suryavamshi, Addl. CIT(DR)(ITAT), Bengaluru

Date of hearing	:	10.07.2019
Date of Pronouncement	:	04.09.2019

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the ex-parte order of CIT(A) – 6, Bengaluru, dated 28.05.2018, for Assessment Year 2010-11.

2. Briefly stated, the facts relevant for disposal of this appeal are as under:-

2.1 The assessee, an individual, filed his return of income for Assessment Year 2010-11 on 20.07.2011 declaring income of Rs.9,74,740/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short ‘the Act’). Subsequently, the Assessing Officer A(O) initiated re-assessment proceedings

under section 147 of the Act and issued notice under section 148 of the Act on 28.03.2017. In response thereto, the assessee, vide letter dated 06.11.2017 stated that the original return of income for Assessment Year 2010-11 filed on 20.07.2011 be treated as filed in compliance to the notice under section 148 of the Act. The assessment was concluded under section 143(3) r.w.s. 147 of the Act vide order dated 29.12.2017, wherein the assessee's income was determined at Rs.52,58,940/-; in view of the re-computation of Long Term Capital Gains (LTCG) of the assessee arising on account of sale of immovable property vide sale deed dated 25.01.2016 at Rs.42,84,209/-. This resulted in the raising of demand of Rs.22,09,790/-.

2.2 The assessee, being aggrieved by the order of assessment dated 29.12.2017 for Assessment Year 2010-11, filed an appeal before the CIT(A)-6, Bengaluru, which was dismissed ex-parte for non-prosecution vide order dated 28.05.2018.


3.1 Aggrieved by the ex-parte order of CIT(A)-6, Bengaluru, dated 28.05.2011 for Assessment Year 2010-11, the assessee has filed this appeal before the Tribunal wherein he has raised the following grounds:-

- 1. The impugned ex-parte Appellate order dated 28-05-2018 passed by the Learned CIT(A) - 6, Bangalore, is opposed to law, facts and circumstances of the case.*
- 2. The Ld. CIT(A) has erred in holding that several Notices were issued/sent but not complied with, without appreciating the fact that the Appellant has not received even a single Notice of Hearing.*
- 3. The Ld. CIT(A) has erred in passing an ex-parte Order without appreciating the fact that in the Appellate Order no details were mentioned as regards the date of issue of Hearing Notices and also the dates of corresponding Hearing.*

4. *The Ld. CIT(A) has erred in passing an ex-parte Appellate Order against to the Principles of Natural Justice.*
5. *The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.*

3.2.1 We have considered the rival contentions and perused the material on record. We find from a perusal / appraisal of the impugned order that the CIT(A) states that by notices issued, the assessee was afforded three opportunities of hearing on 13.04.2018, 03.05.2018 and 18.05.2018. Non compliance / Non attendance by the assessee before the CIT(A) on the above three dates of hearings resulted in the CIT(A) dismissing the assessee's appeal ex-parte for non prosecution.

3.2.2 According to the contentions of the assessee before us in the grounds of appeal (supra); not even a single notice of hearing purportedly issued by the CIT(A) has even been received by the assessee. In support of these contentions, the assessee has filed an Affidavit, sworn to before a Notary which reads as under:-

 I, J. T. Satish Chandra, Major, S/o J. Thimmappa, residing at No. 506, 4th Main, 11th Cross, WOC Road, 2nd Stage, Mahalakshmpuram, Bangalore - 560086.

1. That the Appeal filed before the Ld. CIT(A) Bangalore - 6 on 05-02-2018 against the Assessment Order dtd: 29-12-2010 for the A.Y 2010-11 was dismissed for alleged non appearance of the Assessee or the Authorized Representative and also no adjournment was sought for either personally or by post as per the finding in para 5 of the Appellate Order which is reproduced as under.

"5. In the instant appeal, it is noted that despite several notices issued/sent providing the appellant an opportunity to appear and put forth his submissions, there was no compliance on his part whatsoever. Neither the appellant nor AR attended. No adjournment was ever sought personally or through post. Therefore the appeal is adjudicated on the basis of material available as per records."

2. That the above finding as regards issue of alleged several hearing notices is not factually correct since not even a single hearing Notice was received.
3. That the ex-parte Appellate Order made by the Ld. CIT(A) Bangalore - 6 is on assumed facts about issue of several alleged hearing notices which is factually incorrect. *1*

3.2.3 The learned DR could not controvert the averments of the assessee, both in the grounds of appeal and the sworn Affidavit, that the notices purportedly issued for the hearings by the CIT(A) was never received by the assessee. In these circumstances, we are of the view that the explanation put forth by the assessee for non-attendance before the CIT(A), on the hearings on 13.04.2018, 03.05.2018 and 18.05.2018 is plausible and in our opinion constitutes reasonable and sufficient cause for non-attendance of the assessee before the CIT(A). We also observe that the CIT(A) dismissed the appeal *in limine* for non-attendance, without addressing the issues raised on merits in the grounds preferred before her; without the benefit of hearing the assessee in the matter and his submissions in this regard. The ultimate object of assessment / appellate proceedings is that the correct income of the assessee be brought to tax. In the case on hand, the assessee being fastened with tax demand of Rs.22,09,790/-, it is unlikely that he would have wantonly, deliberately or

intentionally not presented himself or through an AR before the CIT(A) to argue his case. In the facts and circumstances of the case, as discussed above, we are of the view that for the cause of substantial justice to be served, it is imperative that the impugned ex-parte order of the CIT(A) dated 28.05.2018 for Assessment Year 2010-11 is to be set aside and we do so and consequently restore to the file of CIT(A) the matter for consideration and adjudication on merits of the grounds raised by the assessee in the appeal before the CIT(A). Needless to add, the CIT(A) shall afford the assessee adequate and reasonable opportunity of being heard and to file details / submissions required, which shall be duly considered by the CIT(A) before deciding the issues raised. We hold and direct accordingly.

4. In the result, the assessee's appeal for Assessment Year 2010-11 is allowed for statistical purposes.

Pronounced in the open court on 4th September, 2019.

Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 4th September, 2019.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.