

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD
BENCH "B-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.560/Hyd/2019		
Assessment Year: 2010-11		
Sri Pamugari Sesha Reddy, Prop. Laxmi Narasimha Wines, D.No. 1-132, Main Road, Kondapuram, Kadapa District. PAN: BHVPS 0635 J	Vs.	Income Tax Officer, Ward-2, Proddatur.
(Appellant)		(Respondent)
Assessee by:	Sri K.C. Devdas, CA - AR	
Revenue by:	Sri Nilanjan Dey - DR	
Date of hearing:	17/10/2019	
Date of pronouncement:	30/10/2019	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A), Kurnool in appeal No. 018/CIT(A)/KNL/2017-18, dated 11/10/2018 passed U/s. 144 r.w.s 250(6) of the Act for the A.Y. 2010-11.

The assessee has raised the following grounds in his appeal:-

- “1. *The order of the Ld. CIT(A), Kurnool in not condoning the delay in filing the appeal which was due to a reasonable and sufficient cause is unsustainable both on law and on merits.*
2. *The Ld. CIT(A), Kurnool ought to have decided the appeal on merits notwithstanding there was a delay in filing the appeal.*

3. *The Ld. CIT(A), Kurnool ought to have condoned the delay as the appellant carried on the business in liquor in Gundur Village and not being aware of intricate provisions of the Income Tax Act, there was a delay in filing the appeal and that the CIT(A) ought to have condoned the delay and adjudicate the appeal on merits.*
4. *The Ld. CIT(A) failed to note that the ITAT, Hyderabad has been estimated the profit @3% of the stock put to sale in all wine cases.*
5. *Any other ground or grounds that may be urged at the time of hearing.”*

3. At the outset, Ld. AR submitted before us that there is a delay of 99 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought my attention to the affidavit filed by the assessee seeking condonation of delay wherein the reason for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

- “1.
2. *I am an agriculturist and illiterate and not well conversant with the Statutory provisions and I strayed into carrying on business in wines for a period of two years at Kondapur Village during the years 2010 and 2011 and discontinued the same.*
3. *.....I was not well conversant with the facts of the case and on the basis of the order passed by the A.O., I relied on some professional, who did not properly represent before the A.O. or before the CIT(A), Kurnool.*
4.
5.
6.
7. *The order of the CIT(A) was passed on 11/10/2018 and was served on me 10/11/2018. When I consulted Mr. Bhaskara Reddy, I was informed that an appeal to the ITAT is to be filed with a prayer for condonation of delay by taking the service of notice of the CIT(A)'s order passed on 11/10/2018, as on the same day the*

appeal is being presently filed on 18/04/2019 with a delay of 99 days.

8.
9. *There was no intention to default and the entire delay occurred on account of my illiteracy and not knowing the nuances of law and therefore, the appellant prays to condone the delay of 99 days.....*
- 10”

4. After hearing the submissions of the Ld. AR and on perusal of the affidavit filed by the assessee explaining the reasons for delay in filing the appeal before the Tribunal, I do not find much merit in their submissions. However, considering the original profession of the assessee being an agriculturist having meagre financial resource, in the interest of justice, I hereby condone the delay in the filing the appeal before the Tribunal.

5. On merits, at the outset, the Ld. AR briefly narrated the facts of the case and submitted that the Ld. CIT (A) has passed ex-parte order without providing an opportunity to the assessee of being heard. It was further submitted that there was a long delay of 4 years, 8 months and 10 days in filing the appeal before the Ld. CIT(A) and the assessee had filed petition seeking condonation of delay wherein it was explained that due to illness and hospitalization of the assessee, the appeal could not be filed within the prescribed time limit. However, in the absence of evidence to prove the sickness of the assessee for such a long period,

the Ld. CIT(A) did not consider the assessee's prayer for condonation of delay and passed ex-parte order dismissing the appeal. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee to pursue the appeal. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that several opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. CIT (A). Therefore, the Ld. CIT (A) had no other option but to pass ex-parte order on merits based on materials on record. Hence, it was pleaded that the appeal of the assessee may be dismissed.

6. I have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, I find merit in the submissions of the Ld. DR. The Ld. CIT (A) had posted the case on two occasions ie., on 07/06/2018 and 18/07/2018. However, none appeared on behalf of the assessee on the above-mentioned dates of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte on merits based on the materials on record. Further, it appears that the assessee has not furnished any cogent evidence with respect to the petition filed seeking condonation of 4 years, 8 months and 10 days delay in filing the appeal before the Ld. CIT(A). In this situation, I do not find much strength in the arguments

advanced by the ld. AR. However, considering the prayer of the Ld. AR and the poor financial position of the assessee, in the interest of justice, I hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh by providing one more opportunity to the assessee of being heard. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 30th October, 2019.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th October, 2019

OKK

Copy to:-

- 1) Sri Pamugari Sessa Reddy C/o. M/s. Sekhar & Co., 133/4, Rashtrapathi Road, Secunderabad – 500 003.
- 2) Income Tax Officer, Ward-2, Proddatur.
- 3) The CIT(A), Kurnool.
- 4) The Pr. CIT, Kurnool
- 5) The DR, ITAT, Hyderabad
- 6) Guard File