

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

BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER

ITA No.74/Hyd/2019		
Assessment Year: 2015-16		
Ramakrishna Kanchetti, Nizamabad. PAN: AQHPK 6427 E	Vs.	Income Tax Officer, Ward-3, Nizamabad.
(Appellant)		(Respondent)
Assessee by:	Sri A. Srinivas, AR	
Revenue by:	Smt. Komali Krishna, DR	
Date of hearing:	05/11/2019	
Date of pronouncement:	05/11/2019	

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A)-5, Hyderabad dated 23/7/2018 in appeal No. 0255/2017-18/CIT(A)-5, dated 23/07/2018 passed U/s. 143(3) of the Act for the A.Y. 2015-16.

2. The assessee has raised the following grounds in his appeal:

- “1. *The order of the Appellate Commissioner is contrary to law, facts & circumstances of the case.*
2. *The Appellate commissioner ought not to have dismissed the appeal ex-parte.*
3. *The Appellate Commissioner ought not to have confirmed the addition U/s. 115BBE of the Act made by the A.O. amounting to Rs. 1,00,231/-.*

4. *The appellate Commissioner ought not have confirmed the addition made by the A.O. amounting to Rs. 5,29,739/- made by the A.O. being payments of VAT and CST.*
5. *Any other ground or ground which the appellant may urge either at or before the date of hearing.”*

3. At the outset, Ld. AR submitted before us that there is a delay of 108 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought my attention towards the affidavit filed by the assessee seeking condonation of delay wherein the reasons for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

- “7. The reasons for delay of 108 days are as under:*
- a) *The case was entrusted to the Chartered Account at Hyderabad for filing the appeal.*
  - b) *The Chartered Accountant was not well and in and out of hospitals for a considerable time.*
  - c) *Subsequently on enquiry, we had realised that the appeal was not filed.*
  - d) *I then immediately entrusted the case to another Chartered Accountant who filed the appeal.”*

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 his submissions because the assessee has not followed up the progress of his case. However, since the reason for delay in filing the appeal before the Tribunal is not solely attributable to the assessee, 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 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). It was further submitted that the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record and partly allowed the appeal. Hence, it was pleaded that the order passed by the Ld. CIT(A) is in order and 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 four occasions ie., 18/04/2018, 11/05/2018, 05/06/2018 and finally on 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. 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, 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 on merits 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, the appeal of the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 05<sup>th</sup> November, 2019.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 05<sup>th</sup> November, 2019

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Copy to:-

- 1) Ramakrishna Kanchetti, 1-12, Mirzapur (V), Birkur, Nizamabad-503301.
- 2) Income Tax Officer, Ward-3, Nizamabad.
- 3) The CIT(A)-5, Hyderabad
- 4) The Pr. CIT-5, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File