

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.3290/Bang/2018
Assessment year: 2011-12

Kamal Chandramohan, Chandrima, Podiyadi, Thirvalla, Pathanamthitta, Kerala – 689 110. PAN: ASTPK 7597D	Vs.	The Income Tax Officer, Ward 14(5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Lakshmi N., CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of hearing	:	10.12.2019
Date of Pronouncement	:	13.12.2019

ORDER

This is an appeal by the Assessee against the order dated 19.01.2019 of CIT(Appeals)-12, Bengaluru, relating to assessment year 2011-12.

2. The Assessee is an individual. His source of income is income from salary. The Assessee during the relevant previous year was employed with M/s. Aspire systems India Pvt.Ltd. For AY 2011-12, the Assessee filed return of income declaring total income of Rs.5,56,970/- which was in accordance with Form No.16 given by the Assessee's employer. The Assessment was completed by the AO u/s.144 of the Income Tax Act, 1961 (Act) (i.e. Best Judgment Assessment) as the Assessee did not

participate in the Assessment proceedings and defaulted in complying with the directions of the AO.

3. The AO noticed from form 26AS which contains details of tax deducted at source that the Assessee was paid Rs.13,65,026 on which tax at source had been deducted by the person making payment to the Assessee. The break up of this sum of Rs.13,65,026 is Rs.3,52,914 being salary for Jan, Feb and March, 2011 paid by the Assessee employer and another sum of Rs.10,12,112 which was interest on FD with Federal Bank received by the Assessee. The AO added the difference between the sum shown as paid to the Assessee as per Form 26AS viz., Rs.13,65,026 and the total income declared by the Assessee in the return of income viz., Rs.5.56.970/- to the total income of the Assessee i.e., a sum of Rs.7,81,774/-.

4. The AO also found from the Annual Information Report (AIR) the Assessee received interest income on FD of Rs.10,12,905/- from Federal Bank. Since the Assessee had not disclosed interest income in the return of income, the aforesaid sum was added to the total income of the Assessee. The AO also disallowed the claim of the Assessee for deduction under Chapter VIA of the Act i.e., u/s.80C of the Act on account of contribution to Provident Fund as according to the AO, the Assessee did not produce any evidence to show payment.

5. Aggrieved by the additions made as above, the Assessee preferred appeal before CIT(A), but the Assessee did not attend the proceedings before the CIT(A) and hence the appeal of the Assessee was dismissed for non-prosecution.

6. Aggrieved by the aforesaid order of the CIT(Appeals), the Assessee has preferred the present appeal before the Tribunal.

7. There is a delay of about 255 days in filing this appeal by the Assessee before the Tribunal, which has been explained in an affidavit filed before the Tribunal as owing to the fact that the Assessee was employed at Chennai and was travelling frequently and the address for service of notices before the CIT(A) was given at a place in Kerala i.e., Thirvalla and he knew about the order of CIT(A) only on his visit to Thirvalla in August, 2018 and it is only thereafter that he took steps to file the appeal before the Tribunal.

8. I have considered the plea for condonation of delay made on behalf of the Assessee and I find that the Assessee is employed at Chennai and because of his earlier employment at Bangalore, he is being assessed at Bangalore. He is a native of Thiruvalla and has given the address at Thiruvalla for service of notices in the form of appeal before CIT(A). We also find that the last of the hearing date before CIT(A) was 11.1.2018 for which notice of hearing dated 27.12.2017 was sent to the Assessee and the same had been returned unserved on the Assessee with the postal remarks "unclaimed returned to the sender". Keeping all these circumstances in mind, I am of the view that the delay in filing the appeal should be condoned accepting the reasons given as sufficient and reasonable cause for the delay in filing the appeal before the Tribunal. Accordingly, I condone the delay in filing appeal by the Assessee.

9. As far as the merits of the appeal of the Assessee are concerned, I find that the Assessee did not appear in proceedings before the CIT(A). Even in proceedings before the AO, the Assessee remained ex-parte. Nevertheless, I find that the addition is made on the basis of difference in sum shown in Form AS-26 and AIR information. Whether the addition on account of interest on FD has been added twice or not requires examination. Otherwise the Assessee's tax liability will be one determined on account of default and not as per law. The law is well settled that tax

liability has to be in accordance with law and any default on non-compliance cannot result in tax liability. I am therefore of the view that the Assessee should be afforded opportunity of being heard. I am, however, of the view that the Assessee should pay cost of Rs.5000/- to the Department. I therefore set aside the order of the CIT(A) and remand the issues of all the additions made by the AO, for fresh consideration by the AO, after affording opportunity of being heard to the Assessee subject to the payment of costs of Rs.5000/- within a period of one month from the receipt of this order. I hold and order accordingly and allow the appeal of the Assessee for statistical purpose.

10. In the result, appeal by the Assessee is treated as allowed for statistical purposes.

Pronounced in the open court on this 13th day of December, 2019.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 13th December, 2019.

/Desai S Murthy /

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

By order

Assistant Registrar
ITAT, Bangalore.