

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, BANGALORE**

Before Shri Chandra Poojari, Accountant Member

ITA No.1658/Bang/2019 : Asst.Year 2013-2014

Sri.G.Chandra Reddy Prop. Yashaswini Agri Tech Yanamalapadi village & Post Chintamani Tq. Chickballapura Dist. 563 125 PAN : APNPC6284N.	Vs.	The Asst.Commissioner of Income-tax, Circle 6(3)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.R.Chandrasekhar, Advocate
Respondent by : Sri.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 22.01.2020	Date of Pronouncement : 27.01.2020
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 22.12.2017. The relevant assessment year is 2013-2014.

2. The assessee has raised following grounds:-

“1. The learned CIT (Appeals), erred in confirming the addition of Rs.6,66,500 being the expenses claimed as ‘Conference Charges’ by the appellant.

2. The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.10,98,700, being the expenses claimed as ‘incentive to Farmers’ by the appellant.

3. The learned Commissioner of Income Tax (Appeals) erred in upholding the additions, which were made solely on the ground that these expenses are supported only by self made vouchers.

4. The learned Commissioner of Income Tax

(Appeals) failed to appreciate that these expenses are necessary and incurred in the course of business of the appellant.

5. *The learned Commissioner of Income Tax (Appeals) erred in confirming levy of interest charged u/s 234B of the act.*

6. *The appellant prays that this Hon'ble be pleased to permit the appellant to add, delete or modify any ground or grounds at the time of hearing."*

3. There was a delay of 469 days in filing this appeal before the Tribunal. The assessee has filed affidavit accompanied by petition for condonation of delay, as follows:-

"I, Chandra Reddy, Son of Gerigi Reddy, Major, residing at Yenamalapadi Village and Post, Chinthamani Taluk, Chickballapur District solemnly state and affirm as under:

1. I filed an appeal against the order of assessment dated 25-03-2016 passed for the assessment year 2013-14 by the learned Respondent. I am staying in rural place and I depended on my tax consultant for my taxation work. My tax consultant participated in both assessment and appeal proceedings. I was under the bona fide impression the matters are being attended to by my tax consultant. Recently I received communication from learned respondent on 02.04.2019 with regard to penal proceedings initiated, I contacted my consultant and tried to know the position. Then, the consultant made efforts to find out the outcome of the appeal and later came to know that the appeal filed against the order of assessment has been dismissed by the learned Commissioner of Income Tax (Appeals) by order dated 22-12-2017. I am informed me that the order of learned Commissioner of Income Tax (Appeals) was served on my tax consultant. Thereafter I made efforts to obtain the

certified copy of the order, since the order of the Commissioner of Income Tax (Appeals) that was received by the my tax consultant was misplaced. After obtaining the certified copy of the order and after taking necessary papers, I approached the Advocate at Bangalore in order to file the appeal before this Hon'ble Tribunal. My tax consultant states the order of the learned Commissioner of Income Tax (Appeals) is not traceable in his records. I have taken steps to file the appeal and the appeal is filed accordingly. In the process there is delay in filing the appeal. The certified copy of the order of learned Commissioner of Income Tax (Appeals) is received by me on 14.06.2019.

2. Presuming the order of the learned CIT(A) has been served on my tax consultant on 01-02-2018, the day on which the order has been uploaded in e-filing portal, there is a delay of 469 days. I respectfully submit that I have a good case on merits, that the expenditures claimed have been disallowed on the ground of non-availability vouchers. Payments are made to Agriculturists for promoting Agricultural seeds. Names of parties were also filed and disallowance is made without appreciating the nature of expense and necessity. Delay in filing the appeal is unintentional for the bonafide reasons. I humbly pray this Hon'ble tribunal be pleased to condone the delay and if the delay is not condoned, the appellant will be put to great hardship and injury, on the other hand no inconvenience will be caused to the respondent if the delay is condoned and appeal is heard on merits.

PRAYER

The appellant humbly pray's this Hon'ble Tribunal may kindly be pleased to condone the delay of 469 days in filing the' appeal and hear the appeal on merit in the interest of justice.”

3.1 The Chartered Accountant of the assessee has also filed an affidavit stating as follows:-

“I, M.L.Gopinath, son of M.S.Lakshminarasimhiah, Major, resident of Chintamani, do hereby state and affirm as under:

That I am an Advocate practicing at Chinthamani. I represented Sri G.Chandra Reddy, the appellant in the appeal No.ITA No.14/C-6(3)(1)/CIT(A)-6/2016-17 the first appeal proceedings for the assessment year 2013-14. The order rejecting the appeal filed was received by me on behalf of Sri.G.Chandra Reddy and had kept with me with an intention to entrust the matter at Bangalore to file an appeal before the Hon'ble Income Tax Appellate Tribunal.

That, in the meanwhile my sister, who was under my care, was hospitalised and later died of illness. Hence, I could not take steps and thereafter I had totally forgotten about the case. Only, when the assessee, Sri G.Chandra Reddy was served with a penalty notice, I came to know that I had not taken steps for filing the appeal and then I tried to locate the order of learned Commissioner of Income Tax (Appeals), which was not traceable. Then, I requested the appellant- assessee to file an application for obtaining a certified copy of the appellate order and accordingly a copy of the order was obtained. After obtaining the certified copy of the order of learned Commissioner of Income Tax (Appeals), the appellant- assessee has filed appeal before this Hon'ble Tribunal which has caused a delay of 469 days. The delay in filing the appeal was due to inadvertent mistake on my part, which was unintentional and due to unavoidable circumstances.

The Appellant has a good case on merits, I humbly submit that the unintentional delay caused on account of me, may kindly be condoned in the interest of justice and appeal be kindly heard on merits.”

Accordingly, the assessee prayed for condonation of delay of 469 days.

3.2 The learned Departmental Representative strongly opposed the condonation of delay.

4. I have heard the rival submissions and perused the material on record. In the present case the delay was on account of assessee's Council Sri.M.L.Gopinath, to whom the assessee was entrusted the work of filing the appeal before the Tribunal. Because the assessee's Council's sister was sick and hospitalized and later she died due to illness, he was not in a position to take immediate step to file the appeal before the Tribunal. Only when the assessee received the communication from the Department about the initiation of penal proceedings, he come to know that the appeal is not filed. The assessee then tried to locate the impugned appeal order, which was not traceable. Later a certified copy of the order is obtained from the Department and which was resulted in filing the appeal belatedly for 469 days. This version of the assessee is supported by an Affidavit dated 15.07.2019, which is placed on record. There is no dispute that the assessee's Counsel has taken a certified copy from the Department and he has failed to inform the assessee on receipt of original appeal order from the CIT(A). Because of the failure on the part of the assessee's Counsel, the assessee could not be put into problem for no mistake of him or the mistake committed by his Counsel. The Hon'ble Supreme Court in the case reported in AIR 1971 Ker. 211@ 215 held as under:

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether

the mistake was bonafide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way.....”

4.1 Though the above said observations were made in the context of the wrong advice given by the Counsel, I am of the view that the above said proposition can also be conveniently extended to the lapse of the counsel in not communicating the appellate to the assessee on right time. When an assessee authorizes a counsel to appear on his behalf, such authorization is given by placing faith on the legal expertise of the Counsel and also with the hope that the counsel shall take care of the interest of the assessee. Hence, when there is a lapse on the part of the legal counsel, in my view, the assessee should not be found fault with, unless it is shown that the blame put on the counsel with malafide intentions in order to cover up the mistake/ lapse on the part of the assessee. In the instant case, it is the contention of the Ld D.R that the explanation of the assessee is not supported by any evidence. In my view, the submission of the Ld A.R that the assessee was not aware of the steps taken by his Counsel to file the appeal before this Tribunal, is a reasonable explanation and to be accepted. In any case, no material was brought on record by the revenue to show that the assessee was continuing to avail the services of very same counsel even after noticing his lapse. Hence, I am of the view that the reason given by the affidavit cannot be considered to be a malafide one. It is well settled proposition that the

mistake on the part of the counsel constitutes sufficient cause in the matter relating to condonation of delay.

4.2 Thus, in my opinion, there is a reasonable cause in filing the appeal belatedly by the assessee before this Tribunal. When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. In the present case, there is no dispute that the assessee was not informed about the passing of the order of CIT(A) and the Counsel himself has taken the appeal order and because of his sister's ill health and later death of his sister, the Counsel was not able to take immediate step in filing the appeal. In my opinion, this is a good and sufficient reason to condone the delay. This view is fortified by the Third Member order of the Amritsar Bench of the ITAT in the case of M/s.Bhagwati Colonizers Pvt. Ltd. v. ITO – ITA No.169/Asr/ 2015 dated 22.10.2019. Accordingly, I condone the delay and admit the appeal for deciding the issue on merits.

5. The facts of the case are that the Assessing Officer added back a sum of Rs.6,66,500 and Rs.10,98,700 claimed as expenditure towards conference charges and incentive to farmers respectively. The assessee has not been able to present proper evidence either before the Assessing Officer or during the appellate proceedings. The assessee has only filed self-made vouchers in support of the same, which appear to be self-serving

in nature. In first appeal, the CIT(A) confirmed both the additions. Therefore, the assessee is in appeal before the Tribunal.

6. At the time of hearing before me, the learned AR sought for one more opportunity to place necessary evidences in support of his claim of above expenditure, which was duly incurred for the purpose of business. The assessee is engaged in the business of agricultural products in a village and not well versed with the accounts and income tax matters.

7. In the facts and circumstances of the case, I am of the view that it would be just and proper to grant one more opportunity to the assessee. Accordingly, the issue in dispute is remitted to the Assessing Officer. The assessee is directed to place necessary evidences before the A.O. to support his claim.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 27th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 27th January, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bengaluru.
4. The Pr.CIT-6, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore