

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No. 2601 & 2602/Bang/2018
Assessment year : 2013 – 14

M/s Tribi Systems Pvt. Ltd., No. 55/B, 1 st Main Road, Electronics City, Bangalore – 560100. PAN : AAACO4139M	Vs.	DCIT Circle 7 (1) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shree Sudheendra B. R., Advocate
Revenue by	:	Smt. R. Premi, JCIT DR
Date of hearing	:	11.03.2020
Date of Pronouncement	:	29.04.2020

ORDER

Per A. K. GARODIA, A. M. :

Both these appeals are filed by the assessee and the same are directed against two separate orders of learned CIT(A) – 7, Bangalore dated 20.07.2018 in quantum proceedings and dated 23.07.2018 in penalty proceedings u/s 271 (1) (c) for the same Assessment Year 2013 – 14. Both these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. First, we take up the quantum appeal. It is submitted by the learned AR of the assessee that the appeal was filed before CIT (A) after a delay of 180 days and request was made before CIT (A) to condone the delay. He submitted that this was explained before CIT (A) that the delay was under these facts that returned loss was reduced by the AO by

making some addition u/s 56 (2) but still, the assessed income was negative and no demand was raised and therefore, the assessee did not file an appeal before CIT (A) but later when the AO imposed penalty u/s 271 (1) (c), the assessee was advised to file quantum appeal also before CIT (A) and the assessee did so. But learned CIT (A) did not condone the delay. He submitted that under these facts, the delay should be condoned and the matter may be restored to CIT (A) for a decision on merit of the quantum appeal. Regarding penalty appeal, he submitted that the penalty notice issued by the AO u/s 274 r.w.s. 271 is available on page 125 of the paper book. He pointed out that in this notice, the allegation of the AO is vague because the AO says in this notice that the assessee has concealed the particulars of income or has furnished inaccurate particulars of income. He placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunath Cotton and Ginning Factory, 359 ITR 565 and submitted that in the facts of the present case, penalty order is bad in law as per this judgment. Learned DR of the revenue supported the orders of the lower authorities.

3. We have considered the rival submissions. We find that the assessment order is dated 29.03.2016 received by the assessee on 31.03.2016 as noted by CIT (A) in para 4 of his order in quantum proceedings. The penalty order is dated 29.09.2016 and quantum appeal is filed by the assessee before CIT (A) on 27.10.2016 i.e. within 30 days from the date of the penalty order. Under these facts that no quantum appeal was filed in view of nil demand and it was filed later because of penalty order appears to be a reasonable explanation and hence, we

condone the delay in filing quantum appeal before CIT (A) and restore the same to CIT (A) for a decision on merit. Learned CIT (A) should provide adequate opportunity of being heard to both sides and then decide the quantum appeal on merit.

4. About Penalty appeal, we find force in the argument of learned AR of the assessee that the penalty order is bad in law in view of the binding judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Manjunath Cotton and Ginning Factory (Supra). Respectfully following this judgment, we hold that in the facts of the present case as per which the allegation in the penalty notice issued by the AO is vague, penalty order is bad in law and we quash the same as bad in law.

5. In the result, the quantum appeal of the assessee is allowed for statistical purposes and the penalty appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated: 29th April, 2020.

/NS/*

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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.