

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'**

**BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

ITA No.1253/Bang/2019
(Assessment year : 2007-08)

Shri Prakash Ramachandra Prabhu,
No.308, 7th Main, HAL #rd Stage,
Indiranagar,
Bangalore-560 075.
PAN No.AAJPP5078N

Appellant

Vs

The Income Tax Officer,
Ward-1(1)(3),
Bangalore

Respondent

Assessee by : Smt. Pratibha, R. Advocate
Revenue by : Smt. R.Premi, JCIT

Date of hearing : 03-06-2020
Date of pronouncement : 04-06-2020

ORDER

PER B.R.BASKARAN, AM:

The assessee has filed this appeal challenging the order dated 28-03-2019 passed by Ld CIT(A)-12, Bangalore and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee without condoning the delay in filing appeal before him and further holding that the appeal is not maintainable before him and also deciding the issue on merits against the assessee. The issue urged by the

assessee related to the claim of exemption u/s 10(38) of the Act against the long term capital gain earned on sale of shares.

2. We heard the parties and perused the record. The background of the case requires to be discussed first. The assessee filed his return of income for AY 2007-08 on 31.07.2007. The total income of the assessee included Long term capital gain of Rs.2,58,60,190/- earned on sale of shares. As per the information available in pages 19 to 26 of the paper book, the assessee has sold shares of a company named I-Flex Solutions Ltd. As per information available at pages 13 to 14 of the paper book, the assessee has sold shares of M/s Oracle Fin Services Software Ltd. Since the Statement of total income has not been attached in the paper book and since the Ld A.R also could not furnish any clarification on this point, it is not clear as to whether the above said capital gain was earned on sale of above said shares.

3. Be that as it may, the assessee has mentioned in "Schedule E1 – Details of Exempt Income" of the return of income that the above said Long term capital gain is exempt. However, in "Part-B" of the return of income relating to computation of total income, the above said long term capital gain came to be stated without claiming exemption u/s 10(38) of the Act. Since the assessee claimed exemption of long term capital gain, he did not pay any tax. When the return of income was processed u/s 143(1) of the Act on 20-03-2009, the exemption was not allowed to the assessee and accordingly a demand of Rs.74.10 lakhs was raised upon the assessee. According to the assessee, he did not receive the copy of intimation u/s 143(1) of the Act and hence he applied for copy of the same later and a copy of intimation was furnished to the assessee on 20.01.2017.

4. It appears that the assessee has received a communication/order dated 6.11.2014 u/s 245 of the Act for adjusting refund pertaining to some of the year against the outstanding demand of AY 2007-08. At that point of time, the assessee filed a revision petition u/s 264 of the Act on 14-07-2015 praying that the demand raised for assessment year 2007-08 be cancelled. However, the Ld Pr. CIT-1, Bengaluru, vide his order dated 27-02-2017, dismissed the revision petition of the assessee holding that the same is time barred. It is pertinent to note that Ld Pr. CIT has observed that the intimation u/s 143(1) has been generated on 20-03-2009 and accordingly computed the limitation period from that date.

5. Thereafter, the assessee filed a rectification petition u/s 154 of the Act on 22-03-2017 before the assessing officer seeking exemption u/s 10(38) of the Act. It was stated therein that the copy of intimation was given to the assessee by a letter dated 17-01-2017 and hence the rectification petition has been filed in time. According to Ld A.R, the said rectification petition has not been disposed of by the AO yet.

6. At this stage, the assessee also filed an appeal before Ld CIT(A) on 25.03.2017 against the intimation dated 20-03-2009 issued u/s 143(1) of the Act. By considering the date of 20-01-2017, i.e., the date on which the copy of intimation was given to the assessee, it was submitted before Ld CIT(A) that the appeal filed before him was delayed by 34 days only.

7. The Ld CIT(A) dismissed the appeal of the assessee on three counts, viz.,:-

(a) He refused to condone the delay of 34 days.

(b) He also held that the appeal is not maintainable before him, since the assessee has chosen alternative remedy u/s 264 of the Act on the very same issue.

(c) On merits, the Ld CIT(A) held that it was the mistake of the assessee in not claiming exemption u/s 10(38) of the Act in the return of income in the original return of income. The assessee could have corrected the same by filing revised return of income, which was not done. Hence there is no mistake in the intimation issued u/s 143(1) of the Act.

8. Aggrieved, the assessee has filed this appeal before us.

9. We heard the parties and perused the record. On the point of delay in filing appeal, the Ld CIT(A) has observed as under:-

“6. I find that the intimation u/s 143(3) is passed on 20-03-2009. The appellant claims that the same was not received by him. It is further submitted by the appellant that the intimation was provided to the appellant vide communication dated 17.1.2017.

7. On receipt of intimation the appellant had filed revision petition before the CIT. The Pr.CIT dismissed the revision petition by her order dated 27.2.2017 which was claimed to have been served on the appellant on 2.3.2017. Now, the appellant was chosen to file the application under section 154 before the assessing authority on 22.3.2017. Thereafter, the appellant has chosen to file the present appeal on 25.3.2017. Accordingly, it is claimed that there is delay of 34 days in filing this appeal. I have examined the chronology.

8. The appellant must have filed the appeal within 30 days of the receipt of the intimation dated 20.3.2009. Even assuming that it took 10 days to serve the intimation the same must have been filed by 30.04.2009. Thus, counted from this date he appeal is filed late by about 8 years.

9. During the appellate proceedings it came to my notice that the appellant has also filed petition u/s 264. This revision petition u/s 264 was filed on 14.07.2015. Thus, he appellant was aware of the intimation at least on this date. Thus, even counting from this date the appeal is filed late by about 18 months.

10. In view of the above misleading statements submitted by the appellant the delay is not condoned”.

We notice that the Ld CIT(A) has held that there was a delay of about 8 years in filing appeal before him, rejecting the claim of the assessee that there was delay of 34 days.

10. We have earlier also noticed that the Ld Pr. CIT has also computed the delay in filing revision petition u/s 264 of the Act by considering the date of intimation, i.e., 20-03-2009. Hence the claim of the assessee that there was delay of only 34 days in filing appeal before Ld CIT(A) was specifically rejected by Ld CIT(A).

11. We have noticed that the assessee has filed revision petition u/s 264 of the Act before Pr. CIT on 14.07.2015. The assessee was constrained to file the above said revision petition, since he received an order u/s 245 of the Act for adjusting refund of some of the year against the demand raised in AY 2007-08. It is noticed that the date of order passed/s 245 of the Act was 06-11-2014, meaning thereby, the assessee was aware of the intimation passed u/s 143(1) for AY 2007-08 by 06.11.2014 itself and hence he has filed revision petition u/s 264 of the Act before Ld Pr. CIT. It appears that the assessee did not take any step at that point of time. It is also not clear as to how the assessee could file revision petition u/s 264 of the Act without a copy of intimation, which was sought to be revised.

12. However, the assessee has claimed before Ld CIT(A) that he has received copy of intimation only on 20-01-2017 and accordingly submitted that the delay in filing appeal before him was only 34 days. However, the Ld CIT(A) has held that the delay is about 8 years. He has further stated that the assessee was aware of the intimation by the time he filed revision petition and the delay is

about 18 months from that date. Accordingly, he has refused to condone the delay in filing appeal before him.

13. In our view, the Ld CIT(A) has given proper reasons for refusing to condone the delay. In fact, the assessee has taken different stands in pursuing the matter and hence the Ld CIT(A) has observed that the assessee has given misleading statements. We also notice that there is huge time gap in between different steps taken by the assessee and the delay during those periods has not been explained properly.

14. We notice that the assessee has, in fact, mentioned in Schedule E1 of the return of income that the long term capital gain is exempt. However, the same was not properly carried forward to the summary page of the return of income resulting in denial of exemption. After that, we notice that the assessee has not properly handled the matter, resulting in delay in filing appeal before Ld CIT(A).

15. Accordingly, we are of the view that the Ld CIT(A) was justified in refusing to condone the delay and dismissing the appeal. The assessee may pursue alternative remedies available under the law to redress his grievance.

16. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 04-06-2020.

Sd/-
(N.V VASUDEVAN
VICE-PRESIDENT

Bangalore

Dated : 04-06-2020

*am

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order
Asst. Registrar