

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

BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER

ITA No.2140/Hyd/2018		
Assessment Year: 2005-06		
Sama Mahipal, Nizamabad. PAN: AVKPS 6670 H	Vs.	Income Tax Officer, Ward-2, Nizamabad.
(Appellant)		(Respondent)
Assessee by:	Sri Tej Prakash Toshniwal	
Revenue by:	Sri Sunil Kumar Pandey-DR	
Date of hearing:	04/03/2020	
Date of pronouncement:	24/06/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-5, Hyderabad in appeal No. 0278/2009-10/CIT(A)-5, dated 31/05/2016 passed U/s. 144 r.w.s 250(6) of the Act for the AY 2005-06.

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

- “1. That the order of the CIT (A)-5, Hyderabad in confirming the assessment order passed by the ITO, Ward-1, Nizamabad, for the AY 2005-06 under the IT Act, 1961 is contrary to law, against the weight of evidence and probabilities of the case.
2. That the law laid down by the Hon’ble Supreme Court that ex-parte best judgment should be fair, reasonable and judicious one within the permissible limits of the Income Tax Act. Merely because the petitioner did not reply to the notice issued by the

*ITO, it does not mean that the ITO can go on adding all the arbitrary one. By looking to the above said order, the ITO even did not allow the interest received from bank as eligible deduction under the IT Act and thus adding the interest to the income is quite contrary to law. This itself is evident to prove that the ITO did not even look to the incomes properly and made arbitrary assessment to create hurdles to petitioner to run from pillar to post with arbitrary artificial demands.*

3. *That the ITO failed to look into the various deposits deposited by the petitioner on different dates and not on single date of Rs. 10,15,000/-. Thus the order of the Income Tax officer is quite contrary to the norms laid down by the IT Act and going beyond the provisions of the IT Act.*
4. *That the petitioner is ready to substantiate his deposits deposited in the bank from out of its surplus capital earned prior to the AY 2005-06. Thus, the ex-parte assessment order passed by the ITO is harsh, capricious in nature and the same is liable to be set aside with a direction to look refresh.*
5. *That the ex-parte assessment order of the ITO dated 29/10/2009, deals with penalty proposed U/s.271(1)(c) of the Act dated 28/08/2009 this shows that the ITO has made up his mind to initiate penal proceedings before the assessment is completed.”*

3. At the outset, it is observed from the record that there is a delay of 806 days in filing the appeal before the Tribunal. In this regard, the assessee had submitted an affidavit seeking condonation of delay wherein the reasons for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below:-

“1.....

2. *I submit that I preferred an appeal before CIT (A), Hyderabad against the ex-parte assessment order passed for the AY 2005-06 U/s. 144 of the IT Act, 1961 by the ITO, Ward-2, Nizamabad. I submit that the CIT (A), Hyderabad who by order dated 31/05/2016 confirmed the ex-parte assessment order passed by the ITO, Ward-2, Nizamabad. I submit that I could not prefer the appeal against the order passed by the CIT(A), Hyderabad as I met with an accident on 13<sup>th</sup> August, 2016, while self driving car in the night from Nizamabad to Velpur and car*

*turned and I got major accident. My entire body is with steel rods. The accident was so major, I could not dream in my life and it is a second life for me. I was unable to walk and carrying on work by sitting at my home only. I recovered in the month of October, 2018 with able to walk with assistance. I hereby enclose doctor Medical Certificate about the major accident. I received the order on 24/06/2016 and could not submit the appeal in time. The due date for filing the appeal against the CIT (A) order is 60 days from the date of receipt of order. The due date for filing the appeal expires by 23/08/2016. I filed the appeal before the Hon'ble Tribunal on 06/11/2018, thus there is a delay of 806 days in filing the above said appeal. Non filing of the above said appeal is neither wilful nor deliberate, but bonafide and beyond my control. Further, I submit that I am the only person to attend all the official work and my wife who is illiterate, attend all the agriculture operations since I possess Ac. 8.0 of agricultural land at Velpur. Even my one son who is software engineer is in Australia and nobody in my family to attend my official works, as such I could not attend the above said appeal order passed by CIT (A), Hyderabad due to the above said accident which resulted into delay in filing the above said appeal.*

3..... ”

4. On perusal of the affidavit filed by the assessee explaining the reasons for delay in filing the appeal before the Tribunal, I find merit in the submissions of the assessee because he was immobilised due to the injuries suffered in the accident. Therefore, in the interest of justice, I hereby condone the delay of 806 days in the filing the appeal before the Tribunal and proceed to hear the appeal on merits.

5. At the outset, the Ld. AR submitted before me that the Ld. AO has passed ex-parte order without providing an opportunity to the assessee of being heard and the same was confirmed by the Ld. CIT (A). It was therefore pleaded that the matter may be remitted back to the file of the Ld. AO in order to provide one more opportunity to the assessee to

pursue the appeal effectively. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative responded to the notices issued by the Ld. AO. It was further submitted that even before the Ld. CIT (A), though the Ld. AR of the assessee appeared before the Ld. CIT (A), he had not provided any evidence in support of the assessee's case. Therefore, the Ld. CIT (A) had no other option but to decide the appeal based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. Revenue Authorities does not call for any interference 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. AO had given sufficient opportunities to the assessee. However, none appeared on behalf of the assessee before the Ld. AO. Even before the Ld. CIT (A), there was no effective representation by the Ld. AR to support the assessee's case. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal based on the material on record. 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, the business of the assessee and his financial condition, in the interest of justice, I hereby

remit the matter back to the file of Ld. AO in order to consider the appeal afresh 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. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities shall be at liberty to pass appropriate orders in accordance with law and merits based on the materials on the record. It is ordered accordingly.

7. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, I find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, I have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

8. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 24<sup>th</sup> June, 2020.

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 24<sup>th</sup> June, 2020.

*OKK*

Copy to:-

- 1) Sama Mahipal, 7-93, Vailpur, Armoor (Mandal), Nizamabad District, Telangana – 503311.
- 2) Income Tax Officer, Ward-2, Aayakar Bhavan, Subhash Nagar, Nizamabad, Telangana-503301.
- 3) The CIT (A)-5, Hyderabad.
- 4) The Pr. CIT-5, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File