

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

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

ITA Nos. 1131, 1132 & 854/Bang/2019
Assessment years : 2010-11, 2010-11 & 2015-16

Hasti Builders Pvt. Ltd., Saroja square, 3 rd Floor, Airport Varthur Road, Bengaluru. PAN: AAACH 4441B	Vs.	The Deputy Commissioner of Income Tax, Circle-3(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Danesh H Gardin, Advocate.
Respondent by	:	Shri. Sundar Rajan, Addl.CIT (DR)(ITAT), Bengaluru.

Date of hearing	:	24.08.2020
Date of Pronouncement	:	27.08.2020

ORDER

Per Bench

ITA Nos.854/Bang/2019 & 1131/Bang/2019 are appeals by the assessee against the separate orders dated 15.11.2017 and 09.08.2018 respectively of the CIT(Appeals)-3, Bengaluru both for the assessment years 2010-11.

2. The facts and circumstances giving rise to these appeals are as follows. The assessee is a company engaged in the business of real estate development. For AY 2010-11, the assessee filed a return of income declaring a total loss of Rs.13,04,559. The order of assessment u/s. 143(3) of the Act was passed by the AO making two additions to the total income declared by the assessee viz., an addition of a sum of Rs.15,89,323 under the head 'income from business' and another addition of Rs.24,39,045

under the head 'long term capital gain'. The order of AO was passed on 30.3.2016. The assessee filed an appeal against the aforesaid order of assessment on 28.4.2016 manually. As per the amended provisions of the Act w.e.f. 1.3.2016, the assessee was required to file appeal electronically w.e.f. 1.3.2016. The assessee was informed by the Office of the CIT(A) about the requirement of filing the appeal electronically vide letter dated 24.8.2016. Another letter dated 26.7.2017 was also sent by the Office of the CIT(A). As per the order of CIT(A), this notice was served on the assessee on 1.8.2017. The CIT(Appeals) found that despite the aforesaid notice, the appeal of assessee was not filed in electronic mode.

3. The case was posted for hearing by the CIT(A) on 9.11.2017 and on assessee's request, it was adjourned to 15.11.2017. On that date also, the AR of the assessee sought sough adjournment, but the same was refused by the Id. CIT(A). Since the appeal was not filed in electronic form as required u/s. 249(1) of the Act and since the assessee despite being apprised of the same, having not chosen to file the appeal in electronic form, the CIT(Appeals) dismissed the appeal of the assessee as unadmitted by his order dated 15.11.2017.

4. The assessee filed an appeal against the order of assessment u/s. 143(3) dated 30.3.2016 on 11.12.2017 in electronic mode and there was a delay of 588 days in filing this appeal, which was explained as owing to the dismissal of the appeal filed physically by the order of CIT(A) dated 15.11.2017 which was received by the assessee on 21.11.2017. Thereafter, the assessee has filed the appeal electronically on 11.12.2017. The assessee prayed for condonation of delay in filing the appeal and to decide the appeal filed in electronic form.

5. The CIT(Appeals), however, by his order dated 09.08.2018 dismissed the appeal of assessee on the ground that since the appeal filed

against the order of assessment dated 30.3.2016 manually was already dismissed by the CIT(A) by order dated 15.11.2017, the appeal filed electronically cannot be entertained. This order was passed by the CIT(Appeals) on 09.08.2018.

6. Aggrieved by the orders of the CIT(Appeals) dated 15.11.2017 and 09.08.2018, the assessee has filed the appeals in ITA No.854/Bang/2019 and ITA No.1131/Bang/2019 respectively before the Tribunal.

7. We have heard the rival submissions. There is a delay of 416 days in filing the appeal in ITA No.854/Bang/2019 and 191 days in filing the appeal in ITA No.11341/Bang/2019 which has been explained by the Director of the assessee in an affidavit filed before the Tribunal. It has been explained that the Manager (Finance), Shri Suresh Sharma, who was in-charge of handling taxation matters of the assessee at the relevant point of time in Sept. 2018, went on long leave due to personal reasons. Upon resuming the work after leave, he brought to the notice of the management about the impugned orders and thereafter appeals were filed.

8. We are satisfied that the delay in filing both the appeals was occasioned due to reasonable cause and accordingly we condone the delay in filing these appeals.

9. As far as merits of the appeals are concerned, it is clear that the assessee filed appeal against the order of assessment dated 30.3.2016 well within time manually. The manual appeal was dismissed as it was not filed in electronic form and the subsequent appeal filed in electronic form was also dismissed because the appeal filed manually was already decided by the CIT(Appeals). We are of the view that the appeal filed electronically by the assessee should be admitted and adjudicated by the CIT(Appeals) as the delay in filing that appeal was also occasioned due to a reasonable

cause. The CIT(Appeals) will decide the appeal filed electronically on merits, after affording opportunity of being heard to the assessee. Since the appeal filed electronically has been directed to be decided on merits by the CIT(A), we are of the view that the appeal which was filed manually has become infructuous and consequently appeal against the order of CIT(A) is also infructuous and therefore ITA No.854/Bang/2019 is dismissed as infructuous, while ITA No.1131/Bang/2019 is treated as allowed for statistical purposes.

ITA No.1132/Bang/2019

10. This is an appeal filed by the assessee against the order dated 18.6.2018 of CIT(Appeals)-3, Bengaluru relating to assessment year 2015-16. The assessee filed return of income for AY 2015-16 declaring a total loss of Rs.46,47,829. An order of assessment u/s. 143(3) dated 01.12.107 was passed by the AO making a disallowance of Rs.45,03,676 u/s 37 of the Act and disallowing depreciation of u/s. 32 of the Act to the extent of Rs.5,58,511. Against the aforesaid order of assessment, the assessee filed an appeal before the CIT(Appeals). As per the order of CIT(Appeals), it is seen that the appeal was fixed on 29.05.2018 and on the request of AR of the assessee, it was adjourned to 04.06.2018 and from 04.06.2018 to 11.06.2018. On 11.06.2018 also, the AR of assessee sought adjournment. The CIT(Appeals) refused grant of adjournment and proceeded to decide the appeal *ex parte* on merits. The CIT(Appeals) ultimately dismissed the appeal on merits.

11. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

12. There is a delay of 254 days in filing the appeal by the assessee before the Tribunal. The reasons for the delay have been explained by the

assessee in the form of an affidavit filed by Shri Suresh Sharma, Finance Officer of the assessee, who was in-charge of tax matters. The reasons for delay in filing the appeal is identical to reasons for the delay in ITA No.1131/Bang/2019 that at the relevant time of the impugned order of CIT(A) dated 18.06.2018 and in the month of Sept. 2018, Shri Suresh Sharma went on long leave for personal reasons. As held in ITA No.1131/Bang/2019, we are satisfied that the delay in filing this appeal i.e. ITA No.1132/Bang/2019 was also occasioned due to reasonable cause and accordingly condone the delay.

13. As far as merits of the appeal is concerned, the CIT(Appeals) has decided the appeal *ex parte*. We notice that despite requests for time, the CIT(A) has granted time only between 29.5.2018 to 11.6.2018 within a span of 12 days two hearings have been fixed. We are satisfied that the assessee did not have proper opportunity of being heard before the CIT(Appeals). Accordingly, we set aside the order of CIT(Appeals) and remand the issues raised by the assessee before the CIT(A) for consideration afresh by him on merits, after affording opportunity of being heard to the assessee.

14. In the result, ITA No.854/Bang/2019 is dismissed as infructuous, while ITA Nos.1131 & 1132/Bang/2019 are treated as allowed for statistical purposes.

Pronounced in the open court on this 27th day of August, 2020.

Sd/-
(A K GARODIA)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 27th August, 2020.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.