

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1855/Hyd/2019		
Assessment Year: 2016-17		
Modusu Raja Reddy, Hyderabad. PAN: AIHPM 7131 P (Appellant)	Vs.	Income Tax Officer, Ward-14(1), Hyderabad. (Respondent)
Assessee by:	Shri M.V. Anil Kumar	
Revenue by:	Shri Sita Rama Rao Akunuru	
Date of hearing:	12/01/2021	
Date of pronouncement:	01/02/2021	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Id. CIT (A)-6, Hyderabad in appeal No. 10031/2019-20/A-3/CIT(A)-6, dated 31/10/2019 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY: 2016-17.

2. The assessee has raised six grounds in its appeal and they are extracted herein below for reference:-

1. *The Ld. CIT (A) erred in law and facts of the case in not condoning the delay of 156 days in filing the appeal and ought to have admitted the appeal.*
2. *The Ld. CIT (A) ought to have condoned the delay in filing of the appeal by 156 days for the reasons stated in the affidavit and*

petition. Your appellant submits that CIT (A) ought to have admitted the appeal on merits by condoning the delay.

3. *The Ld. CIT (A) as well as the Assessing Officer erred in law and facts of the case in estimation of income from sub-contract ignoring the fact that no sub-contract was undertaken, as no amount was received from principal contractor.*
4. *The Ld. CIT (A) as well as the Assessing Officer erred in law and facts of the case in estimating the income on assumption and presumptions based on TDS without considering the fact whether amount was received, and work executed. The addition is bad in law.*
5. *Your appellant submits that only real income has to be taxed and income which is not earned or received and estimation only on the basis of 26AS income is bad in law. The addition may be deleted.*
6. *For these and such other grounds that may be urged at the time of hearing your appellant prays that the Hon'ble Members may direct deletion of the addition."*

3. At the outset, the Ld. AR submitted before me that there was a delay of 126 days in filing the appeal before the Ld. CIT (A). The Ld. AR further submitted that before the Ld. CIT (A), the assessee had filed submissions stating the reasons for the delay in filing the appeal and had requested for condonation the delay which is reproduced in the Ld. CIT (A)'s Order in para 2.7. The same is extracted herein below for reference:-

"Dear sir, Assessee's brother in law Mr. Mohan Reddy was suffering from cancer from last six months who was wholly dependent on assessee only, who was regularly attending to and fro to hospital finally could not survive and died during the last month, in this process I was not able to devote time for filing the appeal, as such I request hon'ble Sir to condone the delay for filing of this appeal."

4. It was further submitted that, the Ld. CIT (A) did not consider the submissions of the assessee and dismissed the appeal of the assessee

by not condoning the delay in filing the appeal. It was therefore pleaded that the delay in filing the appeal before the Ld. CIT (A) may be condoned and the matter may be remitted back to the file of the Ld. CIT (A) so that the assessee can pursue the appeal effectively otherwise great injustice will be inflicted on the assessee. On the other hand, the Ld. DR vehemently argued in support of the order of the Ld. CIT (A) and pleaded that the same may be confirmed.

5. Having regard to the facts and circumstances of the case and after carefully perusing the materials on record, I am of the view that the onus is on the assessee to furnish justifiable reasons with evidence while seeking condonation of delay, if any, before the competent Authorities. In the present case, it appears that the assessee could not convincingly explain the reasons for the delay in filing the appeal before the Ld. CIT (A) with evidence. Therefore, the Ld. CIT (A) refrained from condoning the delay and dismissed the appeal of the assessee. However, in the case of the assessee, I am of the view that, considering the gravity of the averments made by the assessee the Ld.CIT(A) ought to have at least provided proper opportunity to the assessee to furnish the evidence/affidavit etc.. Further considering the peculiar facts and circumstance of the case and the financial position and the nature of the profession of the assessee being an agriculturalist, in the interest of justice, I hereby condone the delay of 126 days in filing the appeal before

the Ld. CIT (A) and remit the matter back to the file of the Ld. CIT (A) for fresh consideration on merits. At the same breath, I also hereby caution the assessee and its Representative to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) 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.

6. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on first February, 2021.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 01st February, 2021.

OKK

Copy to:-

- 1) Modusu Raja Reddy C/o. M. Anandam & Co., Chartered Accountants, Flat No. 7A, Surya Towers, S.P. Road, Secunderabad, Telangana – 500 003.
- 2) The Income Tax Officer, Ward-14(1), 6th Floor, A-Block, Income Tax Towers, A.G. Guards, Hyderabad.
- 3) The Commissioner of Income Tax (Appeals)-6, Hyderabad.
- 4) The Principal Commissioner of Income Tax-6, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File