

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-B”, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.457/Bang/2020 : Asst.Year 2015-2016

Shri Jeevan Bishnoi Shree Hanuman Provision Store Near Essar Petrol Bunk RT Nagar, Bangalore – 560 032. PAN : AEXPB5149Q.	v.	The Income Tax Officer Ward 7(3)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ravishankar S.V., Advocate

Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 02.03.2021	Date of Pronouncement : 02.03.2021
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ORDER

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.05.2018. The relevant assessment year is 2015-2016.

2. The impugned CIT(A)'s order was communicated to the assessee on 13.03.2020. Therefore, the appeal ought to have been filed before the ITAT on or before 13.05.2020. The appeal was filed before the Tribunal only on 29.05.2020. Therefore, there was a delay of 17 days in filing this appeal before the Tribunal. However, due to Covid Pandemic situation, the Hon'ble Apex Court in suo motu writ petition (Civil) No.3/2020 vide judgment dated 23.03.2020, had extended the period of limitation from 15.03.2020 till further orders. In view of the

extended period of limitation by the Hon'ble Supreme Court, there is no delay in filing this appeal.

3. The grounds raised read as follow:-

“1. The order of the Hon'ble Commissioner of Income Tax (Appeals)-6, Bengaluru passed under section 250 of the Income Tax Act, 1961, insofar as it is against the appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the appellant's case.

2. The appellant denies himself to be liable to be assessed to total income of Rs.31,15,500/- as against the returned income of Rs.8,08,910/- on the facts and circumstances of the case.

3. The impugned assessment order is passed without jurisdiction and the proceedings are void ab initio as the notices and orders were not served on the appellant and consequently, the same needs to be quashed on the facts and circumstances of the case.

4. The learned Commissioner of Income Tax (Appeals) was not justified in not affording sufficient opportunity of hearing and consequently, passed the order in violation of principles of natural justice on the facts and circumstances of the case.

5. The learned Commissioner of Income Tax (Appeals) erred in law in mechanically upholding the addition of Rs.23,06,594/- by estimating 20% of the gross receipts, which is highly excessive and liable to be reduced substantially on the facts and circumstances of the case.

6. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the estimated income could not have exceeded 8% of the gross receipts including the returned income on the facts and circumstances of the case.

7. Without prejudice and not conceding that estimation is warranted, the learned Commissioner of Income Tax (Appeals) ought to have granted benefit of telescoping of the returned income which was not considered by the Assessing Officer.

8. The appellant denies itself liable to be charged interest under section 234A, 234B and 234C of the Act on the facts and circumstances of the case.

9. *The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

10. *For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.”*

4. The brief facts of the case are as follow:

The assessee is an individual. For the assessment year 2015-2016, the return of income was filed on 23.03.2016 declaring total income of Rs.8,08,910. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. Notices u/s 142(1) of the I.T.Act was issued to the assessee. Since there was no reply to the notices, there was a proposal to estimate the income at 20% of the turnover of Rs.1,15,32,973. To the proposal to the best judgment assessment also, there was no compliance on the part of the assessee. Consequently, the assessment was completed u/s 143(3) r.w.s. 144 of the I.T.Act vide order dated 19.12.2017 fixing the total income at Rs.31,15,500.

5. Aggrieved, the assessee filed an appeal to the first appellate authority. Since there was no appearance before the CIT(A), the appeal was dismissed *in limine* without adjudicating the issues on merits.

6. Aggrieved, the assessee has filed this appeal before the Tribunal. The learned AR stated that the assessee had changed the address. It was submitted that due to inadvertence and oversight, the changed address was not intimated to the Assessing Officer. Consequently, notices issued by the A.O.

and the CIT(A) were not received. Therefore, it was prayed that in the interest of justice and equity, assessee may be given one more opportunity to produce the necessary material before the A.O. In this context, the assessee has also filed an Affidavit.

7. The learned Standing Counsel present strongly supported the orders of the Income Tax Authorities.

8. I have heard rival submissions and perused the material on record. It is the claim of the assessee that there was change of address. Consequently, the notices issued by the A.O. and the CIT(A) were never received by him. The assessee has filed an Affidavit stating the reasons of non-appearance before the A.O. and the CIT(A). The relevant portion of the Affidavit reads as follow:

"I, Jeevan Bishnoi, aged 40 about years S/o Khamuram Bishnoi, presently residing at #2 under the C/o Shree Hanuman Provision Stores, near Essar Petrol Bunk, RT Nagar, Kanakanagar, Bengaluru-googz, solemnly affirm under oath as follows:

1. *That I am presently residing at the above address since 2016 and I have moved house from No 20, Dasappa Garden, HMT Layout, R T Nagar, Bengaluru - 560032.*

2. *That, I am in the profession of Carpentry and I undertake work in the nature of interior design, furnishing and other allied work as are available from individuals, builders, corporate houses and also do job work in the nature of contract, etc.*

3. *That I have under my supervision various artisans, skilled and unskilled personnel, who are required to be monitored at various worksites, which requires me to be travelling most of the day and that my home is usually "locked, keeping in mind the long hours of work and travel to distant places.*

4. *That the assessment for the AY 2014-15 was concluded*

exparte on 27/12/2016 and penalty order was also passed on 22/06/2017, and I have not received either of the notices or the orders passed due to my change in the address, which was not intimated to the learned Assessing officer, Ward - 6(3)(1), Bangalore, due to inadvertence and oversight.

5. *That the assessment order for the AY 2015-16 was also passed ex parte since the proceedings were e-proceedings and the order passed was also under section 144, and pursuant to the attachment of the bank account, I became aware that an order had been passed for AY 2015-16 and subsequently an appeal was preferred before the learned CIT(A)-6, Bangalore.*

6. *That the address was still not updated by the ITP, who drafted the appeal and the notices sent by post were returned unserved and the order of the CIT(A) came to be passed exparte, dismissing the appeal, for want of representation.*

7. *That I was in appeal before the CIT(A)-13, Bangalore, for the AY 2012-13, which was being handled by a different advocate. The learned CIT(A) - 13, remanded the matter to the file of the AO, for verification of facts, upon which an opportunity was granted to me, to file documents and comments if any, by the ITO, Ward - 6(3)(1), Bangalore in remand proceedings.*

8. *That the present authorised representative has appeared before the ITO, Ward - 6(3)(1), Bangalore and was informed that demands were outstanding for the AY 2014-15 and AY 2015-16 due to orders passed exparte. The authorised representative has informed me and I have taken steps to immediately obtain the true copies of the orders and preferred appeals against all the orders passed exparte, at the earliest possible.*

9. *The copies of the orders for the AY 2014-15 were received by hand from the office of the ITO, Ward - 6(3)(1), Bangalore on 09/03/2020 and for AY 2015-16 on 13/03/2020.*

10. *I solemnly affirm and state that what is stated in Para 01 to 09 of the present affidavit is true and correct to the best of my knowledge, information and belief."*

9. In the facts and circumstances of the case, I am of the view that in the interest of justice and equity, one more opportunity should be granted to the assessee to represent the case before the A.O. Therefore, the entire issue raised in this appeal is restored to the files of the A.O. The assessee shall

cooperate with the Department and shall not seek unnecessary adjournments. The A.O. shall afford a reasonable opportunity of hearing to the assessee and shall take a decision in accordance with law. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 02nd day of March, 2021.

**Sd/-
(George George K)
JUDICIAL MEMBER**

Bangalore; Dated : 02nd March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bangalore.
4. The Pr.CIT-6, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore