

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE
BEFORE SHRI. B.R BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2478/Bang/2019
Assessment Year : 2012-13

The Asst. Commissioner of Income-Tax, Circle-4(1)(2), Bengaluru.	Vs.	M/s Metric Stream Infotech (India) Pvt. Ltd., AMR Tech Park – 4B, Nos.23 & 24, Hongasandra Village, Begur Hobli, Bengaluru-560 068. PAN - AACCM 4991 K
APPELLANT		RESPONDENT

Revenue by	:	Smt. R Premi, JCIT-DR
Assessee by	:	Shri P.C Khincha, C.A

Date of Hearing	:	25-03-2021
Date of Pronouncement	:	16-04-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 27/09/2019 passed by learnt CIT (A),-4, Bangalore for assessment year 2012-13 on following grounds of appeal:

- “1. That the CIT(A) has erred in allowing the appeal of the Assessee in so far as Issue of Penalty u/s 271F is concerned.*
- 2. That the CIT(A) has erred in not appreciating the fact that even though the Assessee had sufficient Cash and Bank balance, it had ignored to pay the tax dues.*

3. That the CIT(A) has erred in not appreciating the fact that the Assessee has not exhibited reasonable cause to explain the delay in filing the returns.

4. That the CIT(A) has erred in not appreciating the fact that provisions of Section 271F has been introduced only as a measure to ensure timely filing of Returns by taxpayer so as to enable the AO to carry out necessary further action with respect to the returns as prescribed under the Act and it does not provide for the non levy of Penalty u/s 271F on account of financial hardship.

5. That the CIT(A) has erred in not appreciating the fact that the Assessing Officer has dealt with every aspect of the Assessee's claim and arrived at the rightful conclusion to levy Penalty u/s 271F.”

2. At the outset the Ld. DR submitted that there is a delay in filing the present appeal by one day. She placed reliance on there can donation application dated 03/12/2019. The Ld.Sr.DR reiterated the reason as mentioned in the application for condonation of delay that the order under 253 (2) was passed by the Ld.Pr.Commissioner on 02/12/2019 and the same was received in the office at 5 PM and hence there is a delay of one-day in filing the present appeal.

3. The Ld.AR did not object for the delay to be condoned.

Accordingly the cut delay of one-day is condoned in filing the present appeal by revenue before this Tribunal.

4. The Ld.Sr.DR submitted that present appeal arises out of order passed under section 271F of the Act for failure of assessee to furnish the return of income by the end of the relevant assessment year in consideration. She submitted that assessee has not responded to the notice under section 271F issued by the Ld.AO and as per section 271F sum of Rs. 5000/- has been levied as penalty for non-furnishing of return of income by the end of the assessment year.

5. On an appeal before Ld.CIT(A), the order of Ld.AO imposing penalty under section 271F of the Act was confirmed.

6. Assessee preferred appeal before this *Tribunal* wherein this *Tribunal* set aside the order of Ld.CIT(A) and remand the question of existence of reasonable cause under section 273B of the Act for fresh consideration by the Ld.AO in the light of additional evidence filed before the *Tribunal*.

7. In the remand proceedings the Ld.AO issued fresh notice giving an opportunity to assessee. Assessee filed various details like bank statement financial statements etc. Ld.AO however observed that assessee had sufficient back balance in the bank to pay the income tax dues however the same was ignored.

8. The Ld.AO once again confirmed the penalty of Rs. 5000/- for violation of section 271F of the Act.

9. Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

10. The Ld.CIT(A) relying on the decision of *Hon'ble Supreme Court* in case of *CIT vs KTC Tires India Ltd.*, reported in (2014) 50 *Taxmann.com* 232 and decision of *Hon'ble Hyderabad High Court* in case of *Leo Edibles and Fats Ltd. vs TRO* reported in (2018) 99 *taxmann.com* 226 allowed the claim of assessee and deleted the penalty levied under section 271F of the Act.

11. Aggrieved by the order of Ld.CIT(A), revenue is in appeal before us now.

12. The Ld.Sr.DR submitted that there is a delay of 1 month and 58 days in filing the return of income for the year under

consideration. She placed reliance on the account statements in support of the claim that assessee had sufficient balance in order to pay the taxes due for the relevant year.

13. On the contrary, Ld.AR placed reliance on the observations of Ld.CIT(A).

14. We have perused submissions advanced by both sides in light of records placed before us.

15. We note that the Ld.CIT(A) while considering this issue has verified the bank statements of assessee in the preceding as well a subsequent financial years. It is also been verified by him as to whether assessee has utilised the money for any other purpose other than meeting the urgencies is or other than for survival of business itself. We note that Ld.CIT(A) relied on decision of *Hon'ble Supreme Court* in case of *KTC Tires India Ltd. (supra)* and observed as under:

"Hon'ble Apex Court in the case of CIT Vs. KTC Tyres (India) Ltd [2014] 50 taxmann.com 232 (SC), has held that capital gains payable by company on sale of assets by court not liquidation expenses, cannot be paid in priority over dues of workmen secured creditors. Also, the Hon'ble High Court of Andhra Pradesh and Telangana in the case of Leo Edibles & Fats Ltd Vs. Tax Recovery Officer (central), Hyderabad [2018] 99 taxmann.com 226 has held that Income-tax department cannot claim any prior(y) payment from liquidation estate merely because it had issued attachment order prior to initiation of liquidation proceedings under Insolvency and Bankruptcy Code.

6.3 From the above discussion made under the Act, it is clear that preference should be given in the manner as the company has actually done. It is seen from the analysis the bank A/c the company was in financial difficulties and was trying to get a loan from CITI Bank bank meeting the expense. However CITI Bank refused to extend the loan. In this case the appellant company was waiting for funds from the Principal. And the principle was able to raise fund only after 31 03.2013 by issue of Series 3 Preferred Stock. It is also seen that upon raising the fund from issue of stock the Principal remitted the money to the

subsidiary and out of which the taxes were paid immediately and IT returns were furnished. It is also seen from the bank A/c's statement that the money received from the Principle is immediately appropriated by the subsidiary depending on the needs and urgencies of the business.

6.4 In the above circumstances it is seen from the submission made, material evidence provided and discussion made that the company had no intention of not filing the return or paying the taxes due in time. It is thus evidence that the company has a reasonable cause for not paying the taxes due in time and for non-filing of return in time which was subsequently complied with delay and qualifies for taking a lenient view and has a reasonable cause for non levy of penalty u/s 271 F of Rs. 5000/-.

6.5 Therefore respectfully following the Hon'ble Supreme Court's findings in the case ell Vs. KTC Tyres (India) Ltd 120141 50 taxmann.com 2.32 (SC) and the Hon'ble Hyderabad HCs decision in the case of Leo Edibles & Fats Ltd Vs. Tax Recovery Officer (central), Hyderabad [2018] 99 taxmann.com 226 the appeal of the appellant is allowed."

16. There is a categorical finding returned by Ld.CIT(A) that assessee was unable to get loan from Citibank for meeting the expenses and Citibank also refused to extend the loan. Subsequently assessee was waiting for funds from the principle which was received only after 31/03/2013 by issue of series of 3 preferred stock. It has been observed by Ld.CIT(A) that the funds have been raised by assessee from issue of stock by the principle to the subsidiary, out of which the taxes were paid immediately and IT returns were furnished.

17. We observe that Ld.CIT(A) has considered the financial difficulties faced by assessee in a very practical manner thereby deleting the penalty of Rs.5000/- levied under section 271F of the act. This view is also supported by the ratio of *Hon'ble Supreme Court* in case of *CIT vs KTC Tires India Pvt Ltd. (supra)*. Under such circumstances the view taken by Ld.CIT(A) do not call for any interference and the same is upheld.

Accordingly the grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 16th April, 2021

Sd/-
(B.R BASKARAN)
Accountant Member
Bangalore,
Dated, the 16th April, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore