

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH : Hyderabad**

(Through Video Conference)

**Before Smt. P. MADHAVI DEVI, Judicial Member
and
Shri L.P. SAHU, Accountant Member**

**ITA No. 1758/Hyd./2019
Assessment Year: 2012-13**

SV Milk and Milk Products Pvt. Ltd.
Chittoor

Vs ACIT, Circle 2(1)
Tirupati

[PAN: AAFCM5874J]
(Appellant)

(Respondent)

For Assessee: Shri E. Phalguna Kumar, Adv.

For Revenue: Smt. S. Prasanna, D.R.

Date of Hearing : 05/05/2021

Date of Pronouncement : 24/06/2021

ORDER

PER L.P. SAHU, A.M.

This is assessee's appeal against the CIT(A)-9, Hyderabad's ex parte order dated 09.10.2019 for AY 2012-13. The assessee has raised the following grounds of appeal.

"1. The Order of the Ld. Commissioner of Income Tax (Appeals)-9 is erroneous and is not based on facts and Circumstances of the case.

2. The Ld. CIT(A)-9, Hyderabad erred in dismissing the appeal on non-payment of admitted tax. The Ld. CIT (Appeals)-9 failed to recognise the fact that entire admitted tax liability was duly paid by, the appellant within 4 days of filing of Return of income [tax effect: Rs.2,63,33,426/-]

3. *The Ld. CIT (Appeals)-9, Hyderabad erred in understanding the fact that the payment of admitted tax liability appears in Form 26AS of the appellant for the AY 12-13 and hence represents discharge/payment of full amount of admitted tax liability. [tax effect: Rs.2,63,33,426/-]*

4. *The Ld. CIT (Appeals)-9, Hyderabad erred in not providing an opportunity to the appellant for filing of condonation of delay. No defect memo was served upon the appellant for delay in filing the appeal.*

5. *The Ld. CIT (Appeals)-9, Hyderabad erred in ignoring the fact that there was a change in the counsel for the appellant, and during such transfer, the appellant had by mistake missed to file the condonation of delay. The mistake is purely inadvertent and is the mistake of the A.R.*

6. *The appellant prays the hon'ble ITAT to direct the ld.CIT(A) Tirupati (before whom the original appeal was filed) to condone the delay in filing of appeal and consider the matter on merits instead of dismissing the appeal.*

7. *The appellant craves leave to plead any other ground either, oral or written with the kind permission of hon'ble Tribunal at any time either before or on the date of hearing.*

Total tax effect: Rs. 2,63,33,426/-”

2. Brief facts of the case are that the assessee filed return of income on 30.09.2012 for AY 2012-13 declaring total income of Rs. 1,99,43,084/- and the case was selected for scrutiny through CASS and statutory notices were issued to the assessee. During the course of assessment proceedings the A.R. of the assessee appeared and submitted reply to the notices issued by the Assessing officer u/s 142(1) of the Act, but the AO completed the assessment as per sec.144 of the Act and assessed income determining at Rs. 10,11,06,360/- by making addition on account of unsecured loans, sundry creditors and creditors for expenses as discussed in the assessment order. Feeling aggrieved from the order of the AO, assessee appealed before the CIT(A) and before the CIT(A) also assessee did not appear in spite of issuance of many notices. Therefore CIT(A) decided the issue ex parte CIT(A) also noticed that there was a mistake on technical ground non filing of condonation of delay petition and non payment of admitted tax. Hence he

dismissed appeal of assessee on facts as well as on merits. Being aggrieved assessee is in appeal before us.

3. At the outset learned counsel requested for sending the matter back to the file of Assessing officer for re-adjudication of the case because the case was decided ex parte by the AO as well as the CIT(A) and he undertook that the assessee will comply with all the notices issued by the revenue authorities for early completion of the case.

4. On the other hand learned DR strongly and vehemently objected to the request of the assessee and drew our attention the non-appearance of the assessee shows the negligent attitude of assessee. Therefore learned DR argued that the request of assessee's AR be not accepted and the matter be decided on the basis of documents available before us.

5. After hearing both the parties and perusing material placed on record we observe from the order of AO that assessee did not appear before him and the AO applied provisions of sec.144 of the Act and completed the assessment and the CIT(A) also has dismissed the appeal of the assessee vide his order dt. 9th October, 2019. As per our considered opinion we accept the request of the learned counsel of the assessee and remit the matter back to the file of Assessing officer for de novo consideration. Needless to mention that reasonable opportunity of hearing shall be afforded to assessee and assessee also is directed to appear before the Assessing officer with complete documents and cooperate in early completion of de novo assessment proceedings and should not seek any further adjournments.

6. In the result the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced on 24/06/2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Dated: 24th June, 2021

*gmv

Copy of Order forwarded to:

1. SV Milk & Milk Products Pvt. Ltd. No. 1-3, Srikalahasti road, Pitchatoor, Chittoor District, A.P
2. ACIT, Circle 2(1), Tirupati
3. ACIT, Range 2, Tirupati.
4. CIT(A)-9, Hyderabad
5. Pr.CIT, Tirupati.
6. D.R. ITAT Hyderabad
7. Guard File