

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 1586/Hyd/2019		
A.Y.: 2013-14		
Unnikrishnan Balan, Secunderabad. PAN: AHHPB 5166 E	VS.	Income Tax Officer, Ward-10(2), Hyderabad-500 004.
(Appellant)		(Respondent)
Assessee by		Shri P. Prasad
Revenue by		Shri Rohit Mujumdar, DR
Date of hearing:		18/08/2021
Date of pronouncement:		07/10/2021

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-6, Hyderabad in appeal No. 0029/2016-17/A3/CIT(A)-4, dated 19/12/2017 passed U/s. 144 r.w.s 250(6) of the Act for the A.Y. 2013-14.

2. The assessee has raised five grounds in his appeal and they are extracted herein below for reference:

- "1. *The Ld. CIT(A) erred in confirming the estimation of income, on professional receipts @ 20% of the receipts.*

2. *The Ld. CIT(A) erred in confirming the duties and taxes payable as per balance sheet.*
3. *The Ld. CIT(A) erred in confirming the trade balance dues, standing in the balance sheet.*
4. *The Ld. CIT(A) erred in confirming the outstanding balance dues, standing in the balance sheet.*
5. *To raise any other ground not raised earlier or to modify the grounds already filed, with the prior permission of the Ld. Members of the ITAT.”*

3. At the outset, the Ld. AR submitted before us that there is a delay of 620 days in filing the appeal before the Tribunal. In this regard, the assessee had submitted a petition for condonation of delay wherein the reasons for filing the appeal beyond the prescribed time limit was explained. For reference, the relevant portion from the affidavit is extracted herein below: -

“.....

(2) *I have received the CIT(A) order dated 19/12/2017, received on 19/12/2017 (the date of the order) and the date of order is taken as the date of receipt of the order, as the Auditor to whom the appeal filing work has been entrusted, he has not attended to the hearing notices given by the Ld. CIT(A) and ultimately the Ld. CIT(A) has completed the order based upon the documents filed along with the appeal and the information available on the file with the Department and the Auditor has received the appellate order and he has not communicated or handed over the CIT(A) order.*

(3) *Only when the modification order consequent to CIT(A) order was passed I came to know about the completion of the appeal before the CIT(A) and later on due to my ill health coupled with drop in financial position, I could not move out much and engage other counsel to file the appeal before the ITAT.*

(4) *After improvement of my health condition, I moved around and I could engaged another Counsel to file the appeal before the ITAT and the appeal was filed on 30/10/2019.*

(5) *There is a delay of 620 days in filing the appeal, as the due date for filing the appeal got over on 17/02/2018, by this date the time of 60 days has lapsed.*

.....

4. On perusal of the affidavit filed by the assessee, we find that the delay of 620 days in filing of the assessee’s appeal before the Tribunal

has occurred because the assessee's Counsel could not communicate the CIT(A)'s order to the assessee within the period stipulated for filing the appeal before the Tribunal due to ill health of the assessee and therefore, there was a delay of 620 days in filing the appeal before the Tribunal. Therefore, considering the reasons adduced by the assessee for belated filing of the appeal as well as the prayer of the assessee, in the interest of justice, we hereby condone the delay of 620 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits.

5. Brief facts of the case are that the assessee is an individual, engaged as a contractor in supply of manpower for M/s. Alaknanda Hydro Power, Srinagar. Assessee filed his return of income for the A.Y. 2013-14 electronically on 30/09/2013 admitting total income of Rs. 3,42,250/-. Initially, the return was processed U/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS.

6. During the scrutiny assessment proceedings, the Ld. A.O. observed that (i) as per the Form 26AS, the total gross receipts U/s. 194C, 194D and 194J were Rs. 2,88,74,572/-; (ii) as per the balance sheet of the assessee, liability was shown at Rs. 15,15,144/-; (iii) Duties and taxes payable at Rs. 5,78,830/-; (iv) Rs. 23,436/- was shown under the head "credit" and (v) interest U/s. 244A of Rs. 3,51,045/- was received by the assessee on account of Income Tax

Refund for the A.Y.s 2011-12 and 2012-13 and the same was not offered to tax. The assessee was asked to furnish the details along with documentary evidence in respect of the above issues raised by Ld. A.O. Before the Ld. A.O. neither the assessee nor his representative appeared to represent the assessee's case. Considering the assessee's failure to appear before the Ld. A.O. and in the absence of any details / evidence in support of the assessee's claim, the Ld. A.O. completed the assessment and passed order U/s. 144 of the Act on 11/03/2016 and determined the total income of the assessee at Rs. 84,05,521/- against the returned income Rs. 1,26,000/- wherein the Ld. A.O. made certain additions aggregating to Rs. 82,79,521/-. Aggrieved by the order of the Ld. AO, assessee filed an appeal before the Ld. CIT(A).

7. On appeal, none appeared on behalf of the assessee before the Ld. CIT(A). However, the Ld. CIT(A) considered the submissions of the assessee and while partly allowing the assessee's appeal granted part relief to the assessee. Aggrieved by the order of the Ld. CIT(A), assessee filed the present appeal before the Tribunal.

8. At the outset, the Ld. AR submitted before us that the Ld. A.O. had passed ex-parte order U/s. 144 of the Act and the assessee was not afforded proper opportunity of being heard. Ld. AR further submitted that due to unavoidable circumstances beyond the control of the assessee, none appeared on behalf of the assessee before the Ld. CIT(A)

and the Ld. CIT(A) has partly allowed the appeal of the assessee. It was therefore pleaded that the disputed issues raised before the Tribunal may be remitted back to the file of the Ld A.O. in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that sufficient opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor his Representative appeared before the Ld. A.O. Even before the Ld. CIT(A), the assessee did not furnish the details as required by the Ld. Revenue Authorities. Therefore the Ld. Revenue Authorities had no other option but to pass orders based on the materials available on record. Hence, it was pleaded that the orders passed by the Ld. Revenue Authorities do not call for any interference.

9. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit in the submissions of the Ld. DR. The Ld. CIT (A) and the Ld. A.O. had posted the case on several occasions. However, none appeared on behalf of the assessee before the Ld.AO. Before the Ld. CIT(A), though the case was adjourned on various occasions, there was no representation either by the assessee or his Counsel and did not furnish the details as required by the Ld. CIT(A). Therefore, the Ld. Revenue Authorities were left with no other option except to adjudicate the appeal based on the material available on record. In this situation, We

do not find much strength in the arguments advanced by the ld. AR. However, considering the issues involved in the appeal as well as the prayer of the Ld. AR, in the interest of justice, We hereby remit the issues before the Tribunal to the file of Ld. A.O. in order to consider the matter afresh and decide them on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the Ld. Revenue Authorities in their proceedings failing which the Ld. Revenue Authorities 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.

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

Pronounced in the open Court on 07th October, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 07th October, 2021.

OKK

Copy to:-

- 1) Unnikrishnan Balan, Plot No. 60, Amrutha Home Apartments, Subash Nagar, Jeedimetla, Hyderabad – 500 055.
- 2) Income Tax Officer, Ward-10(2), IT Towers, AC Guards, Masab Tank, Hyderabad – 500 004.
- 3) The CIT(A)—6, Hyderabad.
- 4) The Pr. CIT—6, Hyderabad. (ii) Pr. CIT—5, Hyderabad.

- 5) The DR, ITAT, Hyderabad
- 6) Guard File