

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.265/Bang/2019
Assessment Year: 2012-13

Mr. Chandrasekhar M. Dadibhavi C/o Gangadhar J.M. & Praveen P. Tarikar, Advocates No.254, 5 th Cross Bharthi Nagar Dharwad PAN NO :AAPPC4772N	Vs.	JCIT, Range-1 Hubli
APPELLANT		RESPONDENT

Appellant by	:	Shri Gangadhar, J.M., A.R.
Respondent by	:	Shri Sankar Ganesh K., D.R.

Date of Hearing	:	21.02.2022
Date of Pronouncement	:	21.02.2022

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 4.12.2018 passed by Ld. CIT(A), Hubballi and it relates to the assessment year 2012-13.

2. The appeal is barred by limitation by 9 days. The assessee has filed a petition stating that he was suffering from fever and hence he could not contact his Chartered Accountant for filing the appeals. We heard parties on this preliminary issue. Having regard

Page 2 of 4

to the submissions made in the affidavit, we are of the view that there was reasonable cause for the assessee in not filing appeal within the limitation period. Accordingly, we condone the delay and admit the appeal for hearing.

3. The grounds urged by the assessee give rise to the following issues:-

- a) Disallowance made u/s 40A(3) of the Income-tax Act,1961 ['the Act' for short].
- b) Income estimated on additional turnover.
- c) Addition relating to unexplained deposit.

4. We heard the parties and perused the record. The assessee is a civil contractor. He filed his return of income declaring total income of Rs.13,88,600/-. The A.O. completed the assessment by determining the total income at Rs.2,71,66,317/-. The appeal filed by the assessee was partly allowed by the Ld. CIT(A). Still aggrieved, the assessee has filed this appeal before us.

5. A perusal of order passed by Ld. CIT(A) would show that the assessee was seeking adjournments repeatedly and hence, the Ld. CIT(A) has passed the impugned order without actually getting proper support from the assessee. At the time of hearing, the Ld. A.R. submitted that the major addition made by the A.O. is the addition made u/s 40A(3) of the Act. He submitted that the assessee is a civil contractor and he had to engage local villagers for carrying out the work and the money was distributed to them by way of cash through a common man. He submitted that the payment made to each of the persons does not exceed the limit prescribed u/s 40A(3) of the Act. He further submitted that material purchased bills have also been clubbed together for the

Page 3 of 4

purpose of accounting and in most of the cases, each bill amount will be less than the limit prescribed u/s 40A(3) of the Act. The Ld. A.R. submitted that the assessee did not properly represent before the Ld. CIT(A) and accordingly prayed that an opportunity may be given to him.

6. The Ld. D.R. submitted that the assessee has not furnished any material before the A.O. or Ld. CIT(A). He submitted that the assessee has also not filed any evidence before the Tribunal. Accordingly, he submitted that the additions confirmed by Ld. CIT(A) does not call for any interference. He further submitted that, if the Tribunal prefers to restore the appeal, it may restore it to the file of Ld CIT(A), so that the demand raised upon the assessee shall survive.

7. We heard the parties and perused the record. As noticed earlier, the Ld. CIT(A) has passed the impugned order without effectively hearing the assessee, since the assessee was keeping on taking adjournments even though many opportunities were provided to him. Since the Ld. A.R. submits that the provisions of section 40A(3) of the Act may not be attracted in the facts and circumstances of the case, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity for presenting his case properly before Ld. CIT(A). Accordingly, we are of the view that all the issues contested in this appeal should be restored to the file of Ld CIT(A). Accordingly, we set aside the order passed by Ld. CIT(A) and restore all the issues to his file by examining them afresh. We also direct the assessee to fully cooperate with the Ld. CIT(A) for expeditious disposal of the appeal. After hearing the assessee, the Ld. CIT(A) may take appropriate decision in accordance with law.

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

Order pronounced in the open court on 21st Feb, 2022.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 21st Feb, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.