

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad SMC Bench, Hyderabad

Before Shri R. K. PANDA, ACCOUNTANT MEMBER

ITA No.187/Hyd/2022		
Assessment Year: 2015-16		
Sri Unnam Mallikharjuna Rao, Hyderabad PAN:ABIPU1350J	Vs.	Income Tax Officer Ward 9(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Sri M. Chandramouleswara Rao	
Revenue by:	Sri R.S.Arvinthakshan,DR	
Date of hearing:	27/06/2022	
Date of pronouncement:	30/06/2022	

ORDER

This appeal filed by the assessee is directed against the order dated 13.02.2019 of the learned CIT (A)-8, Hyderabad relating to A.Y 2015-16.

2. There is a delay of 1054 days in filing of this appeal by the assessee for which the assessee filed a condonation petition along with an affidavit. In the petition for condonation of delay, the assessee submitted as under:

“I, Unnam Mallikharjuna Rao, Aged about 48 Years, R/o, Flat No: 504, Vijaya Maruthi Apartments, Road No.3, Green Hills Colony, Hyderabad 500035, Telangana, hereby Submit as follows:-

1) That I am an income tax Assessee and filed my Income Tax Return for the Assessment 2015-16 which was processed under section 143(3) of the Income tax Act and the assessment was completed by estimating the income at 8% of the gross amount of deposits into bank accounts by the Income Tax Officer, Ward-9(4), Hyderabad. The Hon'ble CIT(A) has sustained the assessment order.

2) *Aggrieved by the Appellate Order and Assessment Order, I am filing an appeal before the Hon'ble ITAT , Hyderabad with a delay of 1055 days, which caused due to my sickness and hospitalization a duly notarized affidavit along with Medical Certificate submitted herewith.*

3) *I humbly submit that the delay in filing appeal before the Hon'ble Income Tax Appellate Tribunal is not at all intentional and the delay is primarily due to my sickness and health conditions coupled with COVID 19 Pandemic.*

4) *I submit that, by delayed filing of the appeal, I am not deriving any undue benefit.*

5) *The delay may kindly be condoned which is primarily due to my health condition and under unavoidable circumstances, further the Hon'ble Supreme Court has extended the time limit for filing of the appeal.*

6) *I most humbly pray the Hon'ble ITAT to admit the appeal, grant condonation and dispose of the same in the larger interest of rendering substantial justice.*

Be pleased to consider”.

3. Similarly, the affidavit filed by the assessee also read as under:

“AFFIDAYIT

I, Unnam Mallikharjuna Rao, Aged about 48 Years, R/o, Flat No: 504, Vijaya Maruthi Apartments, Road No.3, Green Hills Colony, Hyderabad 500035, Telangana, do hereby solemnly state and affirm as follows:-

1) *That I am an Income tax Assessee and filed my return of income for the Assessment 2015--16 and the same was processed under section 143(3) of the Income tax Act by the Income Tax Officer, Ward-9(4), Hyderabad.*

2) *That I have filed appeal against the assessment order before the Hon'ble Commissioner of Income tax (Appeals)-8, Hyderabad and the same has been disposed of by sustaining the assessment by an ex party appellate order dated 13.02.2019, for non-appearing during the proceedings.*

3) *That I have received the CIT(A) appellate order on 29.04.2019 and appeal before the Hon'ble ITAT has to be filed within 60 days i.e., by 28.06.2019. Hence my filing*

of the present appeal before the Hon'ble' ITAT is delayed by 1055 days.

4) That I am suffering from severe back pains coupled with pain in both lower limbs etc., and hospitalized and further undergoing treatment till now. Doctors advised me to restrict outdoor movement and confine to bed and to home. This physical condition has caused delay in taking advice from the tax consultants and in filing the present appeal. I am enclosing copies of medical certificates for my ailments.

5) That the Hon'ble Supreme Court has extended the time limitations considering the COVID 19 Pandemic conditions up to 28.02.2022 in Civil Appeal NO.21 of 2022.

6) That the delay in filing the present appeal is not at all intentional and the same is caused by medical reasons and impaired movement of legs and continuous medical treatment and physiotherapy coupled with COVID 19 Pandemic conditions.

7) That by delayed filing of the present appeal before the Hon'ble ITAT, the assessee is not gaining any undue advantage and this delay is caused by Pandemic conditions and health problems the appellant is undergoing.

8) That the appellant is most humbly praying the Hon'ble Income Tax Appellate Tribunal to be kind and admit the appeal by condoning the delay of 1055 days in filing the present appeal by considering the medical conditions and Hon'ble Supreme Court directives and in the interest of rendering substantive justice.

Sd/-

(Deponent)

4. After hearing both the sides and after considering the contents of the condonation application filed along with the affidavit and by relying on the decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition vs Mst. Katiji & Ors on 19 February, 1987 reported in (1987) SCR (2) 387, the delay in filing of this appeal is condoned.

5. Facts of the case, in brief, are that the assessee individual filed his return of income for the A.Y 2015-16 on

29.2.2016 declaring total income of Rs.3,30,170/-. The case was selected for limited scrutiny through CASS to verify “cash deposits in savings account(s) is more than the turnover”. Thereafter, notice u/s 143(2) was issued to the assessee on 26.7.2016 asking the assessee to appear on 22.8.2016, but the assessee did not appear for the hearing. Another notice u/s 142(1) was issued on 23.01.2017 requesting the assessee to furnish information on business activity, details of bank accounts and evidence on carrying on the business activity.

6. Subsequently the assessee appeared before the Assessing Officer and filed certain details. After considering various information furnished by the assessee, the Assessing Officer determined the income by adopting the profit margin of 8% on the turnover of Rs.1,99,52,500/- and determined the total income at Rs.15,96,200/-. Since the assessee did not appear before the learned CIT (A), the learned CIT (A) in the exparte order passed by her, dismissed the appeal filed by the assessee.

7. Aggrieved with such order passed by the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

“1. The appellate order of the learned CIT (A) is bad and erroneous both on facts and in law.

2. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in sustaining the estimation of income and the assessment order even in the absence of such mandate provided in “Limited Scrutiny” and as such the assessment base on estimation of income is without jurisdiction. She ought have considered the fact that, the mandate given to the Assessing Officer in “Limited Scrutiny” is to “verify cash deposits in savings account(s) is more than the turnover” and not for “estimation of income” and thus the assessment order estimating income is without jurisdiction.

3. On the facts and in the circumstances of the case and in law, the learned CIT (A), and without prejudice to the above mentioned jurisdictional legal ground of appeal, has erred in sustaining the estimation of income from retail trade @ 8% basing provisions of section 44AD applicable for "other business" instead of @ 5% basing on applicable section for retail trade u/s 44AF of the I.T. Act. The learned CIT (A), ought have ordered estimation of income @5% of turnover after giving allowance for cash re-deposits out of earlier cash withdrawals.

4. Such other ground or grounds that may be urged during the hearing of the appeal".

8. I have heard the rival arguments made by both the sides. It is the submission of the learned Counsel for the assessee that the CIT (A) has not granted sufficient opportunity to substantiate his case and therefore, in the interest of justice, the assessee should be given one more opportunity to substantiate his case.

9. The learned DR, on the other hand, strongly opposed the arguments advanced by the learned Counsel for the assessee. He submitted that the learned CIT (A) had given as many as seven opportunities to the assessee and therefore, the assessee should not be given any further opportunity and the order of the Id CIT (A) should be upheld.

10. I have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT (A) and the paper book filed on behalf of the assessee. I find the case of the assessee was selected for "cash deposits in savings bank account(s) more than the turnover". I find the Assessing Officer in the order passed u/s 143(3) of the Act after analyzing the submissions made by the assessee found that the assessee

has a turnover of Rs.1,99,52,500 and thereafter adopting the profit rate of 8% determined the total income of the assessee at Rs.15,96,200/-. I find the learned CIT (A) in her ex-parte order sustained the additions made by the Assessing Officer since nothing was brought before her to take a contrary view than the view taken by the Assessing Officer. It is the submission of the learned Counsel for the assessee that in the interest of justice, the assessee should be given an opportunity to explain his case before the learned CIT (A). Considering the totality of the facts of the case and in the interest of justice, I deem it fit and proper to restore the issue to the file of the learned CIT (A) with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the learned CIT (A) without seeking any further adjournment under any pretext failing which the learned CIT (A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court on 30th June, 2022.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Hyderabad, dated 30th June, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	Sri Unnam Mallikharjuna Rao C/o Md.Shafi Ullah, Flat No.781, Opp: Archies Pride Apartments, OU Colony, Shaikpet Dargah, Hyderabad 500008
2	Income Tax Officer Ward 9(4) Hyderabad
3	CIT (A)-8, Hyderabad
4	Pr. CIT – 7, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order