

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri George George K, JM & Ms.Padmavathy S, AM**

ITA No.241/Bang/2022 : Asst.Year 2015-2016

M/s.Anand Sweets & Savouries No.8, Sangeetha Complex Commercial Street Bengaluru - 560 001. <b>PAN : AAIFA8522F.</b>	v.	The Deputy Commissioner of Income-tax, CPC Ban galore
(Appellant)		(Respondent)

Appellant by : Smt.Suman Lunkar, CA  
Respondent by : Sri.Rama Nathan R, Addl.CIT-DR

<b>Date of Hearing : 04.07.2022</b>	<b>Date of Pronouncement : 05.07.2022</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 16.03.2022. The relevant assessment year is 2015-2016.

2. The grounds raised read as follows:-

*"1. The learned Commissioner of Income-Tax (Appeals) has erred in dismissing the appeal and thereby confirming the Intimation made u/s 143(1) of the Act. The Intimation made by the learned Assessing Officer being bad in law and void-ab-initio was required to be quashed instead of being confirmed.*

*2.1 The learned CIT(A)-II, Bangalore has erred in rejecting the appeal filed by the appellant by not condoning the delay in filing the appeal holding that the appellant has failed to substantiate reasonable cause for inordinate delay in filing the appeal. The action of the CIT(A), being wholly erroneous, both on facts and law and also against principles of natural justice are to be negated.*

*2.2 In any case, the learned CIT(A)-II, Bangalore having*

*issued the hearing notice u/s 250 of the Act, having heard the appellant personally, has erred in dismissing the appeal by not condoning the delay in filing the appeal. The action of the CIT(A)-11, Bangalore being contrary to provisions of law is to be negated and appeal ought to have been admitted and heard on merits of the case.*

*2.3 In any case and without further prejudice, the learned CIT(A)-II, Bangalore has erred in not appreciating the facts of the case that the appellant was prevented from reasonable and sufficient cause from filing of appeal with in the due date prescribed. The delay in filing the appeal is neither intentional nor deliberate and same should have appreciated and delay in filing the appeal would have been condoned.*

*3.1 In any case and without prejudice, the learned CIT(A)-11, Bangalore would have disposed the appeal on merits of the case.*

*3.2 The learned DCIT (CPC) has erred in disallowing the remuneration paid to working partner. On proper appreciation of facts and law applicable, the remuneration paid to the working partners is in accordance with the deed is to be allowed to the appellant and the disallowance as made is to be deleted.*

*3.3 In any case, the remuneration as claimed by the appellant is computed as per the provisions of section 40(b)(v) of the Act and same is to be allowed as claimed by the appellant.*

*4. The appellant denies the liability to pay interest u/s 234B and 234C of the Act. The Interest having been levied erroneously is to be deleted.*

*5. In view of the above and on the grounds to be adduced at the time of hearing, it is requested that the impugned orders passed by the authorities below be quashed or at least the CIT(A)-II, Bangalore be directed to admit the appeal by condoning the delay in filing the appeal or the remuneration as claimed be allowed and Interest levied be also deleted.”*

3. The brief facts of the case are as follows:

The assessee is a partnership firm. For the assessment year 2015-2016, the return of income was filed on 01.10.2016 declaring total income of Rs.2,01,29,920. The return was

processed by the DCIT,CPC, Bangalore on 02.08.2016, wherein the total income of the assessee was determined at Rs.3,01,29,920. The remuneration provided to the partners at Rs.1,00,00,000 claimed as deduction u/s 40(b) of the I.T.Act in the return of income was disallowed in the intimation.

4. Aggrieved, the assessee filed an appeal before the first appellate authority. There was a delay of 1504 days in filing the appeal before the first appellate authority. The assessee had filed petition for condonation of delay and also the supporting affidavit of partner of assessee-firm. In the said petition, it was submitted that the assessee has not received the proposal for making adjustment u/s 143(1) of the I.T.Act and was under the bonafide impression that the return of income was accepted. Further, it is stated that no intimation u/s 143(1) of the I.T.Act was served on the assessee. It is stated that the assessee came to know of the intimation only on logging on to the Income Tax portal on 01.04.2022, wherein a sum of Rs.41,01,560 was determined as payable by the assessee u/s 143(1)(a) of the I.T.Act. It was stated that the assessee immediately requested for a copy of the intimation and obtained the same. Therefore, there is no delay in filing appeal before the CIT(A). The CIT(A), however, rejected the contentions of the assessee and dismissed the appeal *in limine* without adjudicating the issue on merits. The CIT(A) concluded that there is no sufficient or good reason for condoning the inordinate delay in filing the appeal before him.

5. Aggrieved by the CIT(A)'s order, the assessee has preferred the present appeal before the Tribunal. The assessee has filed a paper book enclosing therein the written submissions and enclosures submitted before the CIT(A). The learned AR reiterated the submissions made before the Income Tax Authorities.

6. The learned Departmental Representative supported the CIT(A)'s order.

7. We have heard rival submissions and perused the material on record. The assessee's petition for condonation of delay submitted before the first appellate authority reads as follows:-

*1. The petitioner had received an intimation u/s. 143(1) dated 02.08.2016 of the I.T. Act. 1961.*

*2. For the year, the petitioner had filed the return of income electronically on 29.09.2015 vide e-filing acknowledgement No. 419903811230816 declaring income of Rs . 2,01,29,920/-.*

*3. The petitioner was under the assumption that its returned income for the year was accepted and there was no further sum payable by the petitioner. On logging on to the income tax portal on 01.10.2020, the petitioner came to know that a sum of Rs. 41,01,560/- has been determined as payable by the petitioner u/s 143(1)(a) of the I.T Act, 1961.*

*4. Thereafter, the petitioner had requested for a copy of intimation online on the Income tax portal. In response thereto, the petitioner received intimation U/s. 143(1) of the Act dated 02-08-2016 vide CPC Ref No. CPC/1516/AS/1544690578 which was passed by ADIT, CPC, assessing the total income of the petitioner at Rs.3,01,22,920/- as against the income declared by the petitioner of Rs.2,01,22,920/- and raising a demand of Rs. 41,01,560/-. This Intimation dated 02.08.2016 was however not served on the petitioner until 01.10.2020.*

*(emphasis supplied)*

5. *In the intimation passed income from business is computed at Rs. 2,95,91,332/- as against Rs. 1,95,91,332/- in the return of income. Probably the remuneration provided to partners of Rs. 1 Crore claimed u/s 40(b) in the return of income is disallowed in the intimation.*

6. *On receipt of intimation, a request for rectification was filed online on 03.10.2020 vide rectification reference no. 675331851031020 which is pending disposal.*

7. *Further, on discussing this matter with the auditors, the petitioner was advised to file an appeal against the intimation passed U/s. 143(1) of the Act.*

8. *Immediately arrangements were made to file appeal against the Intimation passed U/s. 143(1) dated 02.08.2016 of the Act. In the normal course, the appeal against the above was to be filed before the Commissioner of Income tax (Appeals) should have been filed within 30 days of receipt of intimation. The appeal is now filed.*

9. *An affidavit to this effect is enclosed.*

10. *The petitioner submits that the delay in filing the appeal is due to reasonable and sufficient cause and therefore prays that the appeal may be taken all records and admitted for hearing.”*

7.1 The Finance Act, 2016 has enlarged the scope of permissible adjustment u/s 143(1)(a) of the I.T.Act. However, the amendment brought in by Finance Act, 2016 also cast obligation on the Assessing Officer to send a notice in writing before making an adjustment to the income as reported by the assessee. The relevant provision, namely, first proviso to section 143(1) of the I.T.Act reads as follows:-

*“Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:”*

7.2 The above proviso imbibes in section 143(1) of the I.T.Act principles of natural justice. In the instant case, there is nothing on record to suggest such a proposal was issued to the assessee before making an adjustment u/s 143(1)(a) of the I.T.Act. Further, there is nothing on record to suggest that the assessee has been served with intimation u/s 143(1)(a) of the I.T.Act. It is the submission of the assessee that only when logging on to the Income Tax portal on 01.10.2020 the assessee came to know that a sum of Rs.41,01,560 has been determined as payable by the assessee u/s 143(1)(a) of the I.T.Act Thereafter, the assessee had requested copy of the intimation online on the Income Tax portal and the intimation was received on 01.10.2020 itself. On receipt of the intimation, the assessee promptly filed rectification application online on 03.10.2020. Since the rectification application was pending disposal, the assessee was advised to file appeal before the first appellate authority and the appeal was filed on 13.10.2020. Moreover, the assessee was heard by the CIT(A) on 15.03.2022 and detailed written submission was submitted, which is not considered by the CIT(A) since the appeal was dismissed *in limine* without condoning the delay.

7.3 As mentioned earlier, since there is nothing on record to suggest that the proposal for the adjustment u/s 143(1)(a) of the I.T.Act (as per the proviso to section 143(1) of the I.T.Act) nor the intimation u/s 143(1)(a) of the I.T.Act was served on the assessee (prior to 01.10.2020), we are of the view, the

delay if at all any in filing the appeal before the first appellate authority needs to be condoned and we do so. In the interest of justice and equity, since the matter on merits was not decided by the CIT(A), same is restored to him. The CIT(A) shall take a decision in accordance with law after affording a reasonable opportunity of hearing to the assessee. The assessee shall not seek unnecessary adjournments in the matter and shall co-operative with the Revenue for the expeditious disposal of the case. It is ordered accordingly.

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

Order pronounced on this 05<sup>th</sup> day of July, 2022.

**Sd/-**  
**(Padmavathy S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 05<sup>th</sup> July, 2022.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bangalore.
4. The CIT-7 , Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore