

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.03/Bang/2023
Assessment Year :2009-10

Mr. B. N. Malatesh, M/s. Safety Sign Technologies, A/45, Srigandhada Kaval, Sunkadakatte, Vishwaneedam Post, Bengaluru – 560 091. PAN :ACAPN 2782 M	Vs.	ITO, Ward – 6(2)(1), Bengaluru.
ASSESSEE		RESPONDENT

Assessee by	:	Shri. Sandeep Chalapathy, CA
Revenue by	:	Smt. Priyadarshini Baseganni, Addl. CIT(ITAT)(DR), Bengaluru.

Date of hearing	:	14.02.2023
Date of Pronouncement	:	27.02.2023

ORDER

Per Padmavathy S, Accountant Member

This appeal by the assessee against the order dated 08.12.2017 for Assessment Years 2009-10, passed by the CIT(A), Bengaluru -6, Bengaluru.

2. Assessee has raised the following grounds of appeal:
 1. That the order of the learned Commissioner of Income Tax (Appeals)-6, Bangalore in so far it is prejudicial to the interest of the assessee is bad and erroneous in law and against the facts and circumstances of the case.
 2. That the order of the learned Commissioner of Income Tax (Appeals)-6, Bangalore is bad in law since the same was dismissed

by issuing a corrigendum letter which was not received by the assessee.

3. That the learned Commissioner of Income Tax (Appeals)-6, Bangalore erred in law and on facts in dismissing the appeal even though the jurisdictional ITAT Bangalore Bench cancels the order passed under section 263 of the Act and therefore the order u/s 143(3) r.w.s. 263 becomes infructuous.
4. That the learned lower authorities erred in law and on facts in adjudicating the issues which is arising from a non-existing order.

Each of the above grounds is without prejudice to one another, the assessee herein seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise each or any of the grounds of appeal either before or at the time of hearing this appeal.

3. The assessee is an individual carrying on the business of manufacture of sign boards, safety signs etc. For the assessment year 2009-10, the assessee's case was selected for scrutiny. The assessee submitted before the AO that he is not able to produce books of accounts as they have been seized by excise department in connection with certain excise proceedings. The AO vide letter no. MISC/ITO/W-10(2)/11-12 dated 13.12.2011, had proposed to estimate income at 8% of the gross turnover to which the assessee vide letter dated 19.12.2011 replied justifying the declared net profit of 3.8% as very reasonable. The AO after considering the submissions of the assessee passed the assessment order u/s 143(3) of the Act on 19.12.2011 estimating the income at 5% of the gross turnover. The assessee accepted the above assessment and paid the tax accordingly.

4. Subsequently the Commissioner of Income Tax, Bangalore —IV (CIT) issued a notice u/s 263 of the Act proposing to revise the order of the

assessment on the ground that the income ought to have been estimated at 8% as per the provisions of section 44AD of the Act. The assessee filed a detailed reply in response to the notice. However the CIT rejected the objections of the assessee and set aside the assessment order u/s.143(3) with a direction to make a fresh assessment after considering all aspects of the case and pass a speaking order.

5. The assessee further filed an appeal before the Hon'ble Income tax Appellate Tribunal, Bangalore questioning the validity of the order passed under section 263 of the Act. The Hon'ble Income Tax Appellate Tribunal, Bangalore (ITA 329/Bang/2014 dated 20.03.2015) passed the order allowing the appeal in favour of the assessee. In the meantime the AO passed an order u/s 143(3) r.w.s 263 of the Act on 25.07.2014 estimating the income at 8% of the total turnover of Rs. 2,58,71,930/-. The assessee filed the appeal before the Commissioner of Income Tax (Appeals) against assessment order passed u/s. 143(3) r.w.s. 263. The CIT(Appeals) after considering the assessee's submissions and in view of the decision of the Tribunal (supra) quashing the order u/s.263, allowed the appeal in favour of the assessee vide order dated 08.12.2017. There was demand notice received by the assessee on 14.09.2022 for an amount of Rs. 5,402/- for the assessment year 2009-10 and when the assessee queried on the reason for the demand the assessee was informed that a Corrigendum letter is issued by CIT (Appeals) dated 19.03.2018 for AY 2009-10 whereby the CIT(Appeals) has dismissed the appeal which was allowed vide order dated 08.12.2017. The assessee is in appeal against the said order of the CIT(Appeals) before the Tribunal.

6. There is a delay of 1030 days in filing the appeal and the assessee has filed a condonation petition while filing the appeal. With regard to the delay in filing the appeal the ld AR submitted at the outset that the assessee did not

receive the corrigendum order of the CIT(Appeals) and therefore the assessee was not aware of the fact that the appeal which was allowed in favour of the assessee is now dismissed. The Id AR further submitted that the assessee had submitted to the ITO vide letter dated 02.12.2022 stating that the Tribunal had quashed the revision order passed u/s.263 and that there cannot be any demand against the assessee with respect to assessment u/s.143(3) r.w.s.263 for AY 2009-10 since the CIT(Appeals) has allowed the appeal after considering aforesaid order of the Tribunal. The Id AR also submitted that only when the assessee visited the office of the AO on 07.12.2022, the assessee was informed that the CIT(Appeals) has dismissed the appeal vide a Corrigendum letter dated 19.03.2018 for AY 2009-10. It is submitted that once the assessee came to know of this fact wrote a letter dated 12.12.2022 to the jurisdictional assessing officer since he cannot approach the CIT(A)-6 due to restructuring of appeal proceedings scheme to Faceless Appeal scheme, requesting to issue a copy of the corrigendum who issued a copy of letter to the assessee on 13.12.2022. The Id AR submitted that in view of the above facts the assessee could not file the appeal within the time limit prescribed, and accordingly prayed for condonation of the delay of 1030 days excluding the period of delay during covid period covered by the decision of the Hon'ble Supreme Court in Cognizance for Extention of Limitation (Miscellaneous Application No.21 of 22) in SMW(C) No.3 of 2020 dated 10.01.2022.

7. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs.

MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 1030 days in filing the appeal and admit the appeal for adjudication.

8. On merits the Id AR submitted that the order passed u/s 263 of the Act has been cancelled by the Hon'ble Tribunal and consequently, the order u/s 143(3) r.w.s 263 becomes infructuous. Therefore the action of CIT(A) to dismiss the appeal by issuing the Corrigendum letter dated 19.03.2018 for the earlier order dated 08.12.2017 allowing the appeal is bad in law.

9. We heard both parties and perused the material on record. We notice that the CIT(Appeals) had originally allowed the appeal in favour of the assessee vide order dated 08.12.2017 with the following remarks:

'In view of the fact that Hon'ble jurisdictional ITAT Bangalore Bench in the assessee's case cancelled order passed under section 263 in ITA 329/Bang/2014 dated 20.03.2015 which is placed on record), appeal against the assessment order passed u/s 143(3) r.w.s. 263 which is subject matter of this appeal, is accordingly allowed'.

10. We also notice that the CIT(Appeals) vide corrigendum dated 19.03.2018 had stated that *"it is clarified that a mistake occurred inadvertently on account of Typographical error in the last line of para 7 & 8 of the said appellate order wherein the word allowed' has been typed in place of 'dismissed'. Therefore, the word 'dismissed' may be read place of 'allowed'"*. In assessee's case the revision order passed u/s.263 had been cancelled by the coordinate bench of the Tribunal by order dated 20.03.2015 and when the revision order is quashed by the Tribunal, we fail to appreciate how the set aside assessment proceedings would survive. The order passed by the AO u/s.143(3) r.w.s. 263 pursuant to the revisionary proceedings

would become infructuous in view of the decision of Hon'ble Tribunal as has been originally held by the CIT(Appeals). Therefore in our considered view the corrigendum issued by the CIT(Appeals) dismissing the appeal of the assessee is not tenable. Accordingly we hold that the corrigendum dated 19.03.2018 issued by the CIT(Appeals) is bad in law and dismiss the same. The grounds raised by the assessee in this regard are allowed.

11. In result the appeal is allowed in favour of the assessee.

Pronounced in the open court on the date mentioned on the caption page.

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

Sd/-
(PADMAVATHY S)
Accountant Member

Bangalore,
Dated: 27.02.2023.
/NS/*

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|-------------|---------------|
| 1. Assessee | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.