

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.250/Bang/2023
Assessment Year : 2014-15

M/s. Township Promoters, Ground Floor, Sri Lakshmi Narayana Complex, Palace Road, Vasanth Nagar, Bengaluru – 577 204. <b>PAN : AAMFM 4542 M</b>	Vs.	Income Tax Officer, Circle –1(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ramakrishnan, CA
Revenue by	:	Shri. Gudimella VP Pavan Kumar, JCIT (DR)(ITAT), Bengaluru.

Date of hearing	:	22.05.2023
Date of Pronouncement	:	22.05.2023

**ORDER**

*Per George George K, Judicial Member :*

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 28.01.2019, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2014-15.

2. There is a delay of 738 days in filing this appeal (after excluding Covid period for calculating delay period as per the judgment of the Hon'ble Apex Court, dated 10.01.2022). The assessee has filed an application for condonation of delay. The learned AR representing the assessee has also filed an affidavit stating therein the reasons for belated filing of this appeal. The affidavit of the learned AR reads as follows:

*"I am the authorized representative of M/s.Township Promoters (PAN No:AAMFM4542M), a partnership firm and filed two appeals before the CIT(A)-1, Bangalore for the AY 2014-15, one in respect of quantum additions framed u/s 143(3) and another against the rectification petition u/s 154 pursuant to the said assessment order.*

*The circumstances under which an appeal belatedly preferred before the Hon'ble ITAT in ITA No:250/BANG/2023 is explained in the petition of condonation of delay filed by the Assessee aforesaid seeking condonation thereunder.*

*The then CIT(A)-1,Bangalore,has disposed appeals in a random fashion without due regard to the provisions of Section 250(2) and (6) and in view thereof the appeal preferred against the quantum additions made aforesaid had been rendered inchoate manner and without due regard to the facts on record and the issues in appeal.*

*I approached the CIT(A)-1,Bangalore in person sometime during the month of January 2019 to highlight the apparent contradiction in the Appellate order whereby the appeal filed against the quantum addition has been allegedly disposed qua his appellate order which is irregular in as much as the substantive appeal ought to be addressed in preference to the subsequent and consequential appeal arising from a rectification petition before the assessing officer.*

*The CIT(A) readily agreed to make amends to the apparent mistake committed in the appellate order and in fact there is history of having rectified similar orders for other Assesseees at my behest in the following cases:*

- 1. M/s.Century Star- AY-2014-15:ITA No.18/CIT(A)-1/2017-18,  
AY 2015-16: ITA No.189/CIT(A)-1/2017-18*
- 2. Mr. Nanjundappa Kupendra-AY 2014-15:ITA No.342/CIT(A)-1/16-17*
- 3. Mr. KakadayShanta ram-AY2014-15: ITA No.65/CIT(A)-1/2017-18*

*I was under the genuine impression that the rectification of the appellate order will be done as a matter of routine convenience by the CIT(A)-1, Bangalore and omitted to follow-up on the issue due to professional preoccupations and also on account of my health issues having had three surgeries on following dates*

- 1. Columbia Asia (Now Manipal Hospital-Hebbal), 14-02-2019*

2. *NU Hospital, Rajaji Nagar on 11-05-2019*
3. *Manipal Hospital, Old Airport Road on 20-12-2019*

*However, I realized the delay in the aforesaid rectification of appellate order only when I countenanced a hearing notice vide DIN no: ITBA/NFAC/F/APL 1/2022- 23/1047475985(1) for the appeal against the rectification order u/s 154 through the Faceless scheme of Appellate proceedings in ITA No: 02/CIT(A)-1/17-18.*

*I immediately took steps to revive the rectification petition filed before the CIT(A)-1, Bangalore vide letter filed on 28th Dec 2022 within the timelimits mandated u/s 154 but could not achieve fruition due to the changed dynamics of virtual appellate proceedings under the new dispensation of the Income tax Act. Subsequently, on the instruction of the CIT(A) to the Appellant, grievance was submitted online through e-filing portal for rectification of the order on 14th Mar 2023 as filed rectification request on 17th Mar 2023.*

*Additionally, mail was sent to National faceless assessment as advised by the CIT(A) to us on 20th Mar 2023 and surprisingly we received a reply on 28-03-2023 stating that no rectification application u/s 154 is pending for the assessee before CIT(A)*

*In view of the above, a belated appeal was filed against the irregular order of the CIT(A) which was omitted to be rectified by the CIT(A)-1, Bangalore post-haste, resulting in a delay of 1451 days(includes covid period of 715 days, covid period can be excluded for calculation of delay period as per Hon'ble Supreme Court order dated 10-01-2022 and condonation delay of 738 days)before the Hon'ble ITAT.*

*In view of the above it is humbly submitted that a delay in filing the appeal was beyond the control of the Appellant and hence may kindly be condoned and be disposed off on merits.”*

3. From the above affidavit of the learned AR, it is clear that assessee had approached the CIT(A) stating that he had erroneously disposed off the appeal *in limine* without adjudicating on merits. The learned AR was pursuing the matter before the CIT(A) and also had taken steps to revive the appeal disposed off erroneously, by filing a rectification application under section 154 of the Act.

The petition filed under section 154 of the Act is within the time prescribed, hence, we are of the view that no laches can be attributed to the assessee and there is “sufficient cause” in filing of this appeal belatedly. Therefore, we condone the delay in filing this appeal and proceed to dispose off this case on merits.

4. The grounds raised read as follows:

1. *The learned CIT(A)-1 is not justified in dismissing the appeal in limine without looking into the merits of the grounds of appeal filed against the impugned assessment order for the aforesaid year.*
2. *The learned CIT(A)-1 is not justified in assuming that parallel appeal filed against rectified order u/s 154 for the same assessment year has been disposed off without ascertaining the correct facts on record.*
3. *The learned CIT(A)-1 is not justified in adverting to the parallel appeal in ITA No.2-CIT(A)-1/ 2017-18 and assuming that grounds and issues therein covers the subject matter of the present appeal.*
4. *The learned CIT(A)-1 erred in concluding that appellate order in ITA No.2-CIT(A)-1/ 2017-18 has decided the scope of assessment framed and impugned in ITA No. 341 CIT(A)-1/ 2016-17 which is factually incorrect.*
5. *The learned CIT(A)-1 is not justified in confirming the addition of Rs.3,0,50,000 as unexplained cash credits without proper appreciation of facts.*
6. *The learned CIT(A)-1 is not justified in confirming the Unsecured loans added aforesaid in a truncated fashion on the alleged ground that confirmations are not available.*
7. *The learned CIT(A)-1 is not justified in confirming the addition of Rs.54,63,000 towards pro rata interest paid on aforesaid added on presumptive basis.*
8. *The learned CIT(A)-1 is not justified in confirming the addition of Rs.5,56,971 towards travel expenses on estimated basis without verification of records.*
9. *The learned CIT(A)-1 is not justified in confirming the addition of Rs.3,53,495 towards depreciation on cars alleging personal use thereof.*

10. *The learned CIT(A)-1 is not justified in confirming the addition of Rs.60,523 towards vehicle maintenance & repair alleging personal use thereof.*
11. *The learned CIT(A)-1 is not justified in condoning the omission of the assessing officer to set-off carried forward business loss and depreciation aggregating to Rs.2,29,00,958 claimed against past years tax returns filed within due dates.*
12. *The learned CIT(A)-1 is not justified in condoning the failure of the assessing officer to set-off current year losses Rs.2,06,77,874 against income determined in the assessment framed.*
13. *In any event, the order of the CIT(A) is pernicious, illegal, arbitrary and made without due regard to the facts and circumstances of your appellant's case and the law applicable there to.*
14. *Your appellant craves the indulgence of the hon'ble ITAT to furnish additional evidence/additional grounds of appeal to buttress the case of the appellant.*
15. *For these grounds, and for such other grounds that may be adduced at the time of hearing it is prayed that the order of the CIT(A) be set aside.*
16. *There is a delay of 738 days(excluding Covid-19 limitation) in filing the present appeal for which a separate condonation petition is filed.*

5. The learned AR submitted that CIT(A) has disposed off the appeal *in limine* without adjudicating on the merits by observing that the issues raised in this appeal are identical to the issue raised in the appeal arising out of order under section 154 of the Act. The learned AR placed on record Form No.35 [grounds of appeal before CIT(A) in both the cases]. The learned AR submitted that the matter may be remitted to the CIT(A) to decide the case on merits.

6. Learned DR supported the order of the CIT(A).

7. We have heard the rival submissions and perused the material on record. Before the CIT(A), assessee had filed 2 appeals. One appeal arising out of the order under section 154 of the Act and the other arising out of the Assessment

Order passed under section 143(3) of the Act. We have perused the grounds of appeal raised before the CIT(A) in both the appeals. We find the grounds raised before the CIT(A) as against the order under section 154 of the Act and out of appeal against order under section 143(3) of the Act are different. Therefore, the CIT(A) has erred in dismissing the appeal *in limine* by holding that “since the issue of additions are similar in both the appeals, this appeal is dismissed *in limine*”.

8. We are given to understand the appeal as against the order under section 154 of the Act before the CIT(A) is still pending and has not been disposed off. Taking into consideration the grounds of appeal as against the present appeal (arising out of the Assessment Order under section 143(3) of the Act), is being different from the appeal against the order under section 154 of the Act, we restore this appeal to the file of the CIT(A) to decide the grounds raised before him on merits. It is ordered accordingly.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

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

Sd/-

**(LAXMI PRASAD SAHU)**  
**Accountant Member**

Sd/-

**(GEORGE GEORGE K)**  
**Judicial Member**

Bangalore.

Dated: 22.05.2023.

/NS/\*

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|-------------------------|---------------|
| 1. Appellants           | 2. Respondent |
| 3. CIT                  | 4. CIT(A)     |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,  
ITAT, Bangalore.