

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.258/Hyd/2020**
(निर्धारण वर्ष / Assessment Year: 2010-11)

H. Gangaram Cloth Merchants, Hyderabad. PAN : AABFH5328P.	Vs.	Asst. Commissioner of Income Tax, Circle - 1, Nizamabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri M.V. Anil Kumar.
राजस्व द्वारा/Revenue by: Shri Kumar Adithya, Sr.A.R.

सुनवाई की तारीख/Date of hearing: 27.07.2023
घोषणा की तारीख/Pronouncement on: 31.07.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Principal Commissioner of Income Tax, 6, Hyderabad dt.01.04.2019 invoking proceedings under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 for the assessment year 2010-11.

2. The grounds raised by the assessee read as under :

“1. Your appellant submits that the Id.CIT(A) ought not to have directed the Assessing Officer not allow depreciation on the addition to the cost of investment and not to set off the current year loss against such addition against the existing express provisions of the Income Tax, 1961.

2. Your appellant submits that the Id.CIT(A) passed directions against the existing provisions of the Income Tax Act, 1961 by reference to the provisions of section 115BBE which was not on statute for the relevant assessment year 2010-11.

3. Your appellant without prejudice to the above grounds submits that

1. On addition of Rs.2,43,713/- to the cost of building, the Assessing Officer may be directed to allow the depreciation on such addition as per section 32 of the Income Tax Act, 1961.

2. In absence of section 115BEE and section 69B, for the relevant assessment year 2010-11 the addition of Rs.2,43,713 ought to have been set off against of current year loss of Rs.71,69,984/-

4. Your appellant submits that the difference in estimation of cost of construction and value as per book being very small, the difference may be ignored and books value may be accepted.”

3. The brief facts of the case are that assessee is a partnership firm and engaged in the business of sale of readymade garments and dress materials. The assessee filed the return of income for A.Y. 2010-11 electronically on 14.10.2010, admitting a loss of (-) Rs.77,09,984/-. The case was selected for scrutiny manually after taking necessary approval of the ACIT, Nizamabad Range. Subsequently, the assessment was completed u/s 143(3) of the Act vide order dt.28.03.2013, determining the assessed loss of the assessee at (-) Rs.71,69,984/- by making an addition of rs.5,40,000/- towards disallowance of expenditure claimed under the heads sundry expenses and other expenses. Thereafter, the PCIT revised the assessment order by invoking the provisions of section 263 of the Act vide order dt.23.03.2015.

Consequent to the said order, the Assessing Officer passed consequential order u/s 143(3) r.w.s 263 of the Act dt.28.03.2016 determining the revised total income or loss of the assessee at (-) Rs.49,56,900/- interalia making an addition of Rs.22,13,080/- towards unexplained cost of construction of building by invoking the provisions of section 69B of the Act. Aggrieved with the same, assessee preferred appeal before the Id.CIT(A), who partly allowed the appeal of assessee.

4. Aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

5. Before us, Id. AR submitted that the appeal filed by the assessee is barred by limitation for a period of 267 days, and the application for condonation of delay has been filed by the assessee. It was submitted by the Id. AR that the assessee has filed an affidavit of the Managing Partner of the company, which read as under :

“The Order of the Commissioner of Income TAX (Appeals) - 6, Hyderabad dated 01-04-2019, for Ay 2010-11 in appeal no. 0075/2016-17, was received on 19-04-2019, by staff in office, who forgot to inform me. During end of February 2020 I have received a call from the Income Tax Department calling for a reply to penalty notice and payment of demand. I have then enquired with my tax consultant, M. Anandam & Co, Chartered

Accountants, Nizamabad, who checked on line and informed me that the CIT (A) had passed the order in April 2019. We have searched the office, in the last week of February 2020 and we found the order and handed over to our tax consultant, for preparation of appeal to Hon'ble Income Tax Appellate Tribunal against the CIT (A) order dated 01-04-2019.

I was informed on 07-03-2020 by my Tax consultants that the Hyderabad office have prepared the Appeal papers and asked me to go to Hyderabad to affix my signature on the appeal documents, I have signed the documents at our tax consultants office at Hyderabad on 09-03-2020. I was also informed that the due date for the filing of the appeal before the Hon'ble Income Tax Appellate Tribunal was 18-06-2019 and there is a delay of 265 days in filing the appeal. As a result, there is a delay in filing the appeal by about 265 days, for the reasons stated above.

I pray that the Hon'ble Members of the Income Tax Appellate Tribunal may kindly condone the delay and admit the appeal.

The above statements are true and correct to the best of my knowledge and belief."

5.1. Furthermore, Id. AR submitted that the assessee has also filed an affidavit of an employee of its firm, namely Zakir Ahmed, which is to the following effect :

"Zakir Ahmed, S/o Iqbal Ahmed, aged about 40 yrs ., R/o H. No. 8-95/1, Belal Bodhan, Nizamabad, Accountant of M/sH Gangaram Cloth Merchants, Nizamabad, do hereby affirm and state on oath that:

am well acquainted with the fact of the case, I am the accountant of the Firm by name M/s H Gangaram Cloth Merchants, carrying on the business of cloth, Beady-made dress and other cloths. I joined the firm during 2009 and still working with them.

The Order of the Commissioner of Income TAX (Appeals) - 6, Hyderabad dated 01-04-2019, for Ay 2010-11 in appeal no. 0075/2016-17, was received on 19-04-2019, by me. After going through the order, I was under the honest belief that Felief was granted. I forgot to inform my Managing Partner, Sri. H Sampath Kumar about the receipt of the CIT(A) order.

During end of February 2020 Mr. Sampath Kumar, Managing Partner received a call from the Income Tax Department calling for a reply to penalty notice and payment of demand. He then enquired with our tax consultant, M. Anandam & Co, Chartered Accountant, Nizamabad, who checked online and was informed that the CIT(A) had passed the order in April 2019.

Mr. H Sampath, Managing Partner enquired with me. I informed him that the order was received but I forgot to inform him and in the meantime the order was misplaced. We have searched the office, in the last week of February we found the order and handed over to our tax consultant, for preparation of appeal to Hon'ble Income Tax Appellate Tribunal against the CIT(A) order dated 01-042019. As a result, there is a delay in filing the appeal by about 265 days, for the reasons stated above. I pray that the Hon'ble Members of the income Tax Appellate Tribunal may kindly condone the delay and admit the appeal.

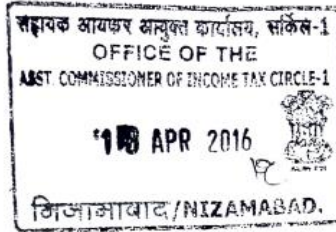
The above statements are true and correct to the best of my knowledge and belief."

5.2. On the basis of the above, it was submitted by the ld. AR that the order passed by the CIT was not available or handed over by the staff to the assessee, and therefore, there was a delay in filing the appeal before the Tribunal. Additionally, it was submitted that the assessee has filed a miscellaneous petition under section 154 of the Act against the order passed by the CIT, which is pending for adjudication.

6. On the other hand, the ld. DR had drawn our attention to the paper book filed by the department, wherein it was mentioned that the appellate order was received in the office of the assessee. Further, order giving effect of ld.CIT(A) order was received by Mr. Devendra Reddy on 06.06.2019. The notice of demand under section 156 dated 06.06.2019 was also received by Mr. Devendra Reddy. Ld. DR further submitted that a letter dated 18/4/2016 was sent by the assessee to the office of the Assistant Commissioner of Income Tax, Circle 1, Nizamabad, wherein it was mentioned that the assessee is preferring an appeal against the order passed by the PCIT. In the said letter, it was mentioned as under :

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H. GANGARAM
 SHOPPING MALL



To
 Assistant Commissioner of Incometax.
 Circle I, Nizamabad

Dt: 18/4/2016

Sir

Sub: M/s H Gangaram Cloth Merchants, Nizamabad-
 PAN No: AABFH5328P - Asst Year 2010/11
 Reply to notice u/s 274 read with sec 271(1)(c)
 of the IT Act 1961-reg

In response to your notice relating to our firm for the asst year 2010/11 we wish to inform you that as we are preferring an appeal against the Assessment order U/s 263 Dt: 28/03/2016 passed with CIT (Appeals) we request you to keep the penalty proceedings in abeyance till the disposal of the appeal and do the needful.

Thanking You

Your's Faithfully
 For M/s H Gangaram Cloth Merchants


 Partner

6.1. Ld. DR contended that the affidavit filed by the assessee was nothing but a tissue of lies and had no legs to stand. Furthermore, ld. AR had fairly conceded that an application under section 154 dt. 14.02.2020 for rectification of the order passed by the authorities was received in the office.

7. We have heard the rival submissions and perused the material on record. Admittedly, from the record produced by the revenue, it is absolutely clear that the order passed by the ld. CIT(A) was duly received in the office of the assessee. Therefore, the assessee had written a letter dt. 18.04.2016 to the AO stating

that they were preferring an appeal against the order of the ld.CIT(A). However, for reasons best known to assessee, the assessee did not prefer the appeal, and the present appeal was filed with a delay of 267 days. The reason given by the assessee as mentioned in the affidavit produced hereinabove do not lead to a conclusion that there was a reasonable cause for filing the appeal with delay. Normally, we condone the delay in filing the application if the assessee is truthful and gave reasonable cause for not preferring the appeal as the legal and valid claim should not be rejected on the technical pleas of the state. However, in the present case, the assessee is not only lacking bonafide and truthfulness but also exercised his right under section 154 of the Act.

8. The plea of the assessee that the copy of order was not handedover to the assessee by its staff is contrary to record. In our view, it is increasing of tendency of litigant by filing false affidavits before the Tribunal. In our view, this type of tendency on part of the litigant is required to be deprecated. Further, we do not find any genuineness and truthfulness in the submissions made by the assessee. Hence, we dismiss the condonation application. For the said reasons, we may fruitfully rely upon the decision passed by the co-ordinate Bench of the Tribunal in ITA Nos.304 to 310/Hyd/2023 dt.13.02.2023. The relevant portion of the said order reads as under :

“8. The learned DR more particularly drew the attention of the Bench to the order passed by the Tribunal in the case of Vishwabharati Mutually Aided Cooperative Credit Society Ltd vs. Income Tax Officer in ITA Nos 360 to 364/Hyd/2022 for the A.Ys 2010-11, 2011-12, and 2013-14 to 2015-16 dated 13.02.2023 wherein the Tribunal in Para 14 & 15 held as under:

“14. Further, the assessee's reasons in the condonation petition do not come under reasonable cause as prescribed under the Act, for condonation of delay and the explanation given by the assessee for delay is not proper and casual in nature. The reasons given by the assessee are devoid of any merit and not sustainable in the

eyes of law. The law requires the assessee to be vigilant and careful in prosecuting its rights under the Act. Considering the totality of the facts and circumstances of the case and the conduct of the assessee, we do not find any reason to entertain the present appeal as the same is barred by limitation.

15. We also draw strength from the decision of Hon'ble Supreme Court in the case of Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and others (Civil Appeal No.7696 of 2021 dt.16.12.2021 relied upon by the Id.DR, wherein the Hon'ble Supreme Court dismissed the condonation petition. The facts of this case are identical to the facts of the present case. The Hon'ble Supreme Court at Para 6.2 had reproduced the facts of the case to the following effect :

"6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously."

In our view, the facts of the present appeal are identical rather situated in a worse footing than that of the case of Majji Sannemma @ Sanyasirao (supra). Hence, the Id.CIT(A) was right in dismissing the condonation application and the appeal of the assessee. We do not find any reasons to interfere with the finding of Id.CIT(A) and accordingly, the appeal of assessee is dismissed. We have not discussed the other decisions cited by the Id.DR, mentioned hereinabove as the decision in the case of Majji Sannemma @ Sanyasirao (supra) was latest in time. Further, the decisions referred by the Id.AR were all prior to the decision in the case of Majji Sannemma @ Sanyasirao (supra) and are distinguishable on facts."

9. We have heard the rival contentions and perused the available material on record. There is no dispute that the order was passed by the Assessing Officer on 31.3.2016. Further, there is also no dispute that the assessee had filed the application u/s 154 on 18.12.2017. The learned CIT (A) had duly recorded the above said findings in the impugned order for condonation of the delay in appeal. In our considered opinion the order passed by the Assessing Officer is the order which can be appealed before the learned CIT (A) in accordance with law. Similarly, the appeal lies against the order passed by the Assessing Officer u/s 154 of the Act. The assessee is a company cannot bury its head in sand for a period of six years and pipedream that the rectification application must have been decided in its favour. No documents have been shown to us demonstrating any inquiry or efforts were made by the assessee for seeking information about its application u/s 154 of the Act. The assessee has taken the things for granted and wrongly presumed that the application made by it must have been

decided in favour of the assessee. In our view, the above said approach of a person like the assessee cannot be approved. The assessee should have been vigilant and take adequate steps to prosecute its applications. Further we are of the opinion that mere pendency of the application u/s 154 cannot be a ground to condone the delay in filing statutory appeals against the assessment order. Both the proceedings are independent and separate appeals lies against both the orders. In the light of the above, we do not find any error in the order passed by the learned CIT (A) whereby the learned CIT (A) refused to condone the delay. Accordingly, this part of the order whereby the learned CIT (A) has dismissed the application for condonation of delay is upheld.

10. *However, in the later part of the order, the learned CIT (A) after holding the above, in para 7 (Supra) has noted the inaction of the Assessing Officer for not passing the order u/s 154 for a period of six years. We also echo our concern to the lethargic, callous and highly deplorable conduct of the Assessing Officer. We depreciate the same. Since the learned CIT (A) has already issued direction to the Assessing Officer to dispose of the pending applications u/s 154 of the Act, we reiterate the same directions and direct the Assessing Officer to decide the 154 applications within a period of six months from the date of passing of this order by the learned CIT (A) i.e. w.e.f. 3.4.2023. A report of the passing of the order by the Assessing Officer be sent to the Tribunal. A copy of the above said order be also placed before the learned CIT (A) for ensuring that the Assessing Officer complies the order in time granted herein above.”*

9. Therefore, respectfully, following the order in ITA No.304/Hyd/2023, we dismiss the application for condonation of delay. As a consequence thereof, we also dismiss the appeal of the assessee being barred by limitation.

10. Having dismissed the appeal, we may point out that undisputedly, in the present case, the application u/s 154 was filed by the assessee before the lower authorities and is pending for adjudication. We expect the lower authorities to expeditiously decide the issues on the subject matter of section 154 application in accordance with law within a period of six months from the date of receipt of this order. In the light of the above, the appeal of the assessee is dismissed.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 31st July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st July, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Gangaram Cloth Merchants, C/o. M. Anandam & Co., Chartered Accountants, Flat No.7A, Surya Towers, S.P. Road, Telangana – 500003.
2	The Asst. Commissioner of Income Tax, Circle 1, Nizamabad.
3	Pr.CIT – 5, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order