

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'C' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 824/Bang/2024
Assessment Year : 2006-07

M/s. Sree Ganesh Gears Pvt. Ltd., Plot No. 106, Belegola Industrial Area, Mysuru – 570 016. PAN: AA ECS8142C	Vs.	The Deputy Commissioner of Income Tax, Circle – 1(2), Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ajith .V, Advocate i/b Shri B.S. Balachandran, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of Hearing	:	30-05-2024
Date of Pronouncement	:	07-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by the assessee against order dated 05/03/2024 passed by NFAC, Delhi for A.Y. 2006-07.

“LEGAL GROUNDS:

1. The order dated 04 March 2024 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre is bad and erroneous and against the facts and circumstances of the case;

2. The learned CIT(A) erred in law and on facts in dismissing the appeal of the Appellant on the grounds of limitation without appreciating that the appeal was filed within the time limit provided by the Hon'ble High Court

of Karnataka in the writ petition of the Appellant in W.P. No. 37722/2016 (T-IT) and hence, the appeal filed was within time.

3. The learned CIT(A) erred in upholding the reassessment proceedings and the assessment concluded by the learned Assessing Officer, Deputy Commissioner of Income-tax, Circle 1(2), Mysuru ("Ld AO") under section 143(3) read with section 147 of the Income-tax Act, 1961 ("Act") after 4 years from the end of the AY when there was no failure on part of the Appellant under proviso to the erstwhile provisions of section 147 of the Act;

4. The learned CIT(A) erred in upholding the reassessment proceedings initiated by the Ld AO based on change of opinion and without having any tangible material which shows escapement of income, thereby violating the provisions of section 147 of the Act;

5. The learned CIT(A) erred in not appreciating that the Appellant had disclosed all material facts necessary for making an assessment and hence, the notice issued by the Ld AO under the erstwhile provisions of section 148 was invalid and without jurisdiction.

GROUND ON MERITS:

6. The Ld CIT(A) and the Ld AO erred in holding that the Appellant had made excess claim of Rs.39,63,967/- under section 43B of the Act;

7. The CIT(A) and the Ld AO erred in not appreciating that the Appellant was sick unit and interest outstanding of Rs.86,10,000/- of IDBI Bank was settled through one time settlement by offering equity shares and hence, the said amount of interest was eligible for claim under section 43B of the Act;

8. The CIT(A) and the Ld AO erred in accepting the income declared by the Appellant without appreciating that the Appellant was eligible for additional claim under section 43B of the Act;

9. The CIT(A) erred in rejecting the claim of the Appellant without appreciating that the Appellant could make additional claim in the appellate proceedings;

10. The CIT(A) and the Ld AO erred in not appreciating that assessment has to be done independently and de hors the return of income filed by the Appellant.

Each one of the above grounds is without prejudice to the other and without prejudice to the grounds of appeal taken earlier.

The Appellant reserves the right to further add, alter or amend each one of the above grounds of appeal.

2. Brief facts of the case are as under:

2.1 The assessee was engaged in the business as Manufacturers of automotive gears. The assessee filed its return of income on 30.11.2006 returning income at Rs. NIL after setting off the brought forward depreciation losses of Rs.14,06,120/- The assessment in the case was completed u/s 143(3) of the Act. Thereafter, rectification order u/s 154 of the Act was passed in the case by the AO on 15.11.2010 determining taxable income at Rs.1,71,751/-. Subsequently, the AO noticed that the assessee claimed deduction u/s 43B of Rs.86,10,000/- and arrived at net loss of Rs.19,803/-. However, the Ld.AO observed that as per previous records, out of the total interest outstanding at the end of A.Y. 2004-05 of Rs.693.93 Lakhs a sum of Rs.652.47 lakhs was adjusted in the subsequent year and the balance brought forward for the A.Y.2006-07 was only Rs.41,46,033/- as against the claim made by the assessee of Rs.86,10,000/-which has resulted in excess allowance of Rs.44,63,967/- u/s 43B claimed by the assessee. Hence, an amount of Rs.44,63,9671- has escaped the assessment within the meaning of section 147 of the Act. Therefore, the AO initiated proceedings u/s 147 of the Act. With the prior approval of the CIT, Mysore, the AO issued and

served notice u/s 148 on 17.01.2013. In response to notice u/s 148, the assessee filed its return of income on 15.03.2013 returning income of Rs.40,99,120/-. The AO issued and served notice u/s 143(2) on 15.03.2013.

2.2 During the assessment proceedings, the AR of the assessee stated that the return of income has been filed after taking into account the amount waived by the KSIDC of Rs. 5 Lakhs towards the repayment of term loan taken for the purpose of capital investment which is not liable for tax and hence declared additional income to the extent of Rs.39,63,967/- in the revised return. The AO completed the assessment accepting the returned income of Rs.40,99,120/- as per the return of income filed in response to notice u/s 148.

2.3 Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A).

2.4 The Ld.CIT(A) dismissed the appeal for non-appearance by observing as under:

“4. It is seen from the records available on ITBA that the appellant filed its submission on 19.05.2021 during the course of present appellate proceedings. Thereafter, the appellant was given opportunities vide notices dated 19.05.2023 (date of compliance - 05.06.2023), 03.09.2023 (date of compliance - 18.09.2023), 14.09.2023 (date of compliance - 23.02.2024). All these notices have been delivered on the appellant. However, the appellant failed to respond to these notices. From the assessment order, it is apparent that the appellant filed return of income on income on 15.03.2013 in response to notice u/s 148 returning income of Rs.40,99,120/- which was accepted by the AO while completing the

assessment. In view of these facts, the appellant should not have any grievance when the income returned itself was accepted by the AO. Thus, the appeal does not survive on merits.”

2.5 Aggrieved by the order of Ld.CIT(A), assessee filed appeal before this *Tribunal*.

3. The Ld.AR at the outset submitted that the Ld.CIT(A) dismissed the appeal *in limine* as there was a delay of 1790 days in filing the appeal before the first appellate authority.

3.1 The Ld.DR submitted that assessee was given sufficient opportunities vide notices dated 19.05.2023, 03.09.2023, 14.09.2023. However, assessee failed to respond to these notices.

3.2 The Ld.AR submitted that, there is no malafide intention on behalf of the assessee, in belatedly filing the appeal before the Ld.CIT(A). The Ld.AR submitted that the assessee preferred Writ Petition before *Hon'ble Karnataka High Court* challenging the validity of order passed u/s. 264 of the act by the CIT, Mysuru in the assessment order dated 27.03.2013. It is submitted that *Hon'ble Karnataka High Court* passed order dated 26.02.2018 granting liberty to the assessee to file appeal before the Ld.CIT(A) within 30 days. The Ld.AR submitted that the delay was caused as assessee was pursuing remedy before Ld.CIT, Mysuru and then before *Hon'ble Karnataka High Court*. In support, he placed reliance on the decision of *Hon'ble Supreme Court* in the case of

Collector, Land Acquisition vs. Mst. Katiji [1987] 167 ITR 471(SC).

3.3 On the contrary, the Ld.DR though vehemently opposed, however could not establish any malafide intention of assessee.

3.4 We have perused the submissions advanced by both sides in the light of records placed before us.

3.5 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. We have to prefer substantial justice rather than technicality in deciding the issue. As observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.(supra)*, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the *Tribunal* is capable of removing injustice and to do justice.

Respectfully following the above view, delay if any in filing appeal before Ld.CIT(A) stands condoned.

4. It is noted that Ld.CIT(A) has not decided the issues on merits. The Ld.CIT(A) is therefore directed to pass a detailed order on merits after considering the submissions / evidences filed by assessee.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly, the appeal filed by the assessee is remanded to the Ld.CIT(A).

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

Order pronounced in open court on 07th June, 2024.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 07th June, 2024.
/MS /

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

By order

Assistant Registrar,
ITAT, Bangalore