

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.971/Bang/2024
Assessment year : 2016-17

Bhadra Sahakari Sakkare Kharkhane Niyamitha, Doddabathi, Davangere – 577 566. PAN : AAAAB 1619H	Vs.	The Income Tax Officer, Ward 1(1), Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha, R., Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	04.07.2024
Date of Pronouncement	:	25.07.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 31.7.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17.

2. At the outset there is a delay of 231 days in filing the appeal by the assessee and the assessee has filed affidavit stating that the order of the CIT(A) was never served upon the assessee. Only when the appellant in connection with some other matter enquired with the Chartered Accountant regarding pending matters, refund, etc., the appellant came to know about the ex parte order passed by the CIT(A)

on 31.7.2023 confirming the order of AO. The CIT(A)'s order was downloaded on 31.3.2024. On the advise of the counsel, appeal came to be filed immediately on 17.5.2024 advised that an appeal has to be filed before the ITAT. It is submitted that the uploading of CIT(A)'s order on the IT portal on 31.3.2024 is not a service of the order on the appellant. The delay of 232 days is only a deemed delay. However, it was requested that due to above reasons, the delay may be condoned.

3. After hearing both the parties, it is observed that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. Briefly stated the facts of the case are that the assessee filed return of income declaring a net loss of Rs.4,47,10,206. The case was selected for scrutiny and statutory notices issued to the assessee. During the assessment proceedings, it was noticed from the financial statements that assessee has made provision in the P&L account as under:-

(i) Provision for interest on SDF loan for 2015-16	Rs.5,74,110
(ii) Provision for interest on NCDC loan for 2015-16	Rs.19,37,500
(iii) Provision for salaries and other	Rs. 92,70,663
(iv) Provision for interest on working capital loan	Rs. 3,59,11,000

5. In this regard the assessee was asked to produce the evidence of payment of above expenditure. In response, the assessee submitted that the above expenditure are only provision made in respect of above items debited to the P&L account and payments were not made.

Therefore it was observed by the AO that total of Rs.4,76,93,273 was merely a provision. He further noted that the above expenditure are covered by provisions of section 43B of the Act. However the assessee has not paid the above amounts within the due date for furnishing return u/s. 139(1) and evidence of such payment was also not furnished. Accordingly he disallowed the entire expenditure and income was assessed at Rs.29,83,067.

6. Aggrieved from the above order the assessee filed appeal before the First Appellate Authority (FAA). The FAA issued notices on various dates for compliance in support of ground of appeal taken by the assessee, but there was no response from the assessee's side. Accordingly on the basis of material available before him, he dismissed the appeal of the assessee. Aggrieved from the order of the CIT(Appeals) the assessee is in appeal before the ITAT.

7. The Id. AR submitted that notices issued by FAA were never served on the assessee. The case was looked after by the previous CA and email-id provided was of earlier CA. The assessee visited the office of CA and checked e-proceedings, then it came to know that Id. CIT(A) has passed the order. Accordingly she requested that the matter may be sent back to CIT(A) for fresh consideration and she requested that if a chance is given to the assessee, it will respond to the notices and substantiate the case of the assessee with evidence before the lower authorities.

8. The Id. DR relied on the order of lower authorities and objected to sending back the matter to lower authorities.

9. Considering the rival submissions, we note that the AO has made addition for not filling/producing any evidences whatever to show that the above expenditures have been paid and also u/s. 43B for not complying the requirements for allowing expenditure in some cases, since these are provisions made into the Profit & Loss account and the assessee was unable to substantiate that the payments have been made within the due date of filing of return u/s. 139(1) of the At. Before the FAA the notices were not replied by the assessee. Considering the facts of the case and in the interest of justice, we remit the issue to the CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to update their email-id Telephone /Mobile No. and address for communication and cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.
10. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 25th day of July, 2024.

Sd/-

(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 25th July, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.