

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA Nos. 1415 & 1416/Bang/2024
Assessment Years : 2016-17 & 2017-18

Smt. Ambuja, No.473, 1 <sup>st</sup> Main, 3 <sup>rd</sup> Cross, C.V. Raman Nagara, Hunasamaranahalli, Hosahalli Main Road, Bengaluru – 562 157. <b>PAN : BMLPA 2213D</b>	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(4), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.09.2024
Date of Pronouncement	:	13.09.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

These appeals are filed by the assessee against the common ex-parte order dated 31.05.2024 of the CIT(Appeals)-11, Bengaluru for the AYs 2016-17 & 2017-18.

2. Since common issues are involved in both the appeals, we first take ITA No.1415/Bang/2024 and its decision shall apply mutatis mutandis to ITA No.1416/Bang/2024.

3. Briefly stated the facts of the case are that assessee is a proprietor of Akshaya Communication and engaged in the business of dealers of selling Sim cards. A survey was conducted u/s. 133A on 12.2.2019 by ITO, Ward 6(3)(4). The case was centralized and accordingly notice u/s. 148 and subsequently other statutory notices were issued to the assessee and there was no response from the assessee's side, opportunity was also given before completing reassessment u/s. 144. During the reassessment proceedings for AY 2016-17, the AO noted from Form 26AS that assessee has received a sum of Rs.96 lakhs from Santosh and has deposited cash during the period from 21.03.2016 to 31.03.2016 of Rs.9,03,500 in his bank account. For want of compliance from the assessee, the AO treated as income from other sources as unexplained cash credit u/s. 68 of the Act and passed the order on 03.03.2022.

4. Against the order of the AO, the assessee filed appeal before the First Appellate Authority (FAA) on 06.07.2022. The ld. FAA noted that assessee did not file appeal as per provisions of section 249(3) of the Act and there was delay of 95 days. The justification for not filing the appeal within time was submitted, but the ld. FAA did not accept the same and the delay was not condoned. He dismissed the appeal of the assessee as not maintainable without going into merits of the case relying on various judgments quoted in his order. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR of the assessee reiterated the submissions made before the FAA and filed an affidavit dated 29.07.2024, the relevant paras of which are reproduced below:-

“ 5. A survey was carried out on 12.02.2019 and thereafter, my case was transferred to the DCIT, Central Circle-1(4), Bengaluru vide order u/s.127 of the Act passed by the PCIT, Bengaluru-1. Thereafter assessment was completed on 03.03.2022 basis best judgement under section 144 read with section 147 of the Act.

6. I submit that none of the notices were served on the me and hence the assessment framed by the learned Assessing Officer ("Ld AO") is in violation of the principles of natural justice. It is submitted that the assessment order dated 03.03.2022 was served on me through post on 07.06.2022.

7. It transpires from the assessment order that notice was issued under section 148 of the Act on 01.03.2021 and thereafter notices were also issued under section 142(1). It also transpires that the notices were issued by the Ld AO were served on the email. It is submitted that the email address to which the notices were sent did not belong to me and hence, there was non-compliance with the notices.

8. It is submitted that before receipt of the assessment order on 07.06.2022, I was neither aware of the proceedings initiated against me nor was I aware of the assessment order being passed in the case.

9. It is submitted that the Ld AO has treated the amount of Rs.96,00,000/- received from Mr Santosh D as income, which is reflecting in the Form 26AS. The Ld AO further has treated the cash deposits of Rs.9,03,500/- as unexplained cash credit under section 68 of the Act without appreciating that the same represented cash deposits against sale of mobile currency recharges. The Ld AO assessed the income for AY 2016-17 at Rs.1,05,03,500/- and has raised demand of tax (including interest) of Rs.84,30,252/-. The Ld AO has levied interest under section 234A and 234B of the Act and has initiated penalty under section 271(1)(c) of the Act.

10. Being aggrieved by the additions made in the assessment order, I preferred appeal before the learned Commissioner of Income-tax (Appeals) ["CIT(A)"].

11. The CIT(A) however vide order dated 31.05.2024 has dismissed the appeal on the ground of limitation. The CIT(A) has observed that the assessment order dated 03.03.2022 was served on me via email on 05.03.2022. I was however under a bona fide belief that the assessment order was served on me only through post which was received by me only on 07.06.2022 for which, I had produced the proof of tear off acknowledgement. The CIT(A) however has disbelieved the said acknowledgement and has concluded that the assessment order was served on 05.03.2022 and since appeal was filed on 06.07.2022 resulting in delay of 95 days in filing of the appeal.

12. The CIT(A) has dismissed the appeal on the ground of delay without confronting me with the evidences produced by the Ld AO which prove that the assessment order was served on the ITBA portal on 05.03.2022 which has been considered as 'date of service' by the CIT(A). I was therefore not provided any opportunity to place my objections to the evidences relied by the Ld AO and also no opportunity was provided to seek condonation of delay since I was under a bona fide belief that the assessment order was served on me for the first time by post only on 07.06.2022.

13. It is settled law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred.

14. The CIT(A) erred in not appreciating that prejudice was cause to me by dismissal of the appeal on technical grounds. The CIT(A) has upheld the assessment order which was an ex-parte order where I was not aware of the proceedings or the assessment order. The CIT(A) by not providing an opportunity to object / file condonation petition, has caused prejudice which has resulted in confirming huge tax demand on me.

15. As stated above, the CIT(A) has contended that the assessment order was served on 05.03.2022 and hence there was delay of 95 days in filing the appeal. I submit that based on the

tear off acknowledgement, I was under the bona fide belief that the assessment was served on me on 07.06.2022 and hence the appeal filed before the CIT(A) on 06.07.2022 was within time. I submit that the delay of 95 days in filing the appeal before the CIT(A) was neither deliberate nor willful.

16. I therefore humbly pray that this Hon'ble Tribunal may be pleased to condone the delay of 95 days in filing the appeal before the CIT(A) and restore the matter to the AO for adjudication on merits since no opportunity was provided before framing the assessment which is an ex-parte order.

17. No prejudice would be caused to the Revenue if the present appeal is allowed and the appeal is heard on merits by the AO.”

6. The Id. DR relied on the order of lower authorities.

7. Considering the rival submissions, we note that the reassessment was completed u/s. 144 of the Act. The appeal was filed with a delay of 95 days before the Id. FAA. The reasons for delay were explained, however the Id. FAA has not accepted the same. The assessee has filed affidavit dated 29.07.2024 before the Tribunal explaining the reasons for delay in filing the appeal before the CIT(Appeals) noted supra. The assessee has submitted that she was under the bona fide belief that the assessment was served on me on 07.06.2022 and hence the appeal filed before the CIT(A) on 06.07.2022 was within time. In our considered opinion, 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 CIT(Appeals) is condoned. Accordingly the appeal is remitted to the Id. CIT(Appeals)

for decision on merits 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 her 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 cooperate with the proceedings for early disposal of the case.

8. In the result, both the appeals are allowed for statistical purposes.

Pronounced in the open court on this 13<sup>th</sup> day of September, 2024.

Sd/-  
( SOUNRARAJAN K.)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 13<sup>th</sup> September, 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.