

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

BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

आ.अपी.सं / ITA No.209/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

Kaur Gurleen DCIT, Circle-5(1)
Hyderabad Vs. Hyderabad
[PAN :AJEPS4329R]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by : Shri CS Subrahmanyam and
Shri V.Siva Kumar, AR

राजस्व द्वारा/Revenue by : Shri B.Bala Krishna, CIT, DR

सुनवाई की तारीख/Date of hearing: 18/09/2024
घोषणा की तारीख/Pronouncement on: 01/10/2024

आदेश / ORDER

PER PRAKASH CHAND YADAV :

Present appeal of the assessee is arising from the order of Principal Commissioner of Income Tax-4 (learned PCIT) dated 23/03/2022 having DIN & Order No. ITBA/REV/F/REV5/2021-22/1041319540(1) and relates to the Assessment Year 2017-18.

2. There is a delay of 324 days in the present appeal for which the assessee has filed an application for condonation of delay dated 22/05/2024. In this application, the assessee has explained the reasons behind the delay and drawn the attention of the Bench towards para 10 and 11 of the application. Learned counsel for the assessee contended that

due to incorrect advice of the erstwhile chartered accountant, the assessee failed to file appeal in time before the Tribunal. Learned counsel for the assessee explained that the erstwhile chartered accountant advised the assessee to for appeal before the ITAT, after passing of the consequential order by the learned Assessing Officer. Learned counsel for the assessee further pointed out that somewhere in April 2023, the assessee consulted some other professional and then only came to know that orders under section 263 are also appealable separately before the Tribunal. Accordingly, the assessee filed the appeal on 11/04/2023.

3. Learned CIT-DR appearing on behalf of the Revenue vehemently argued that the assessee has not acted bona-fidely in as much as the assessee has waited for the result of the consequential order and then only decided to file appeal before the Tribunal. Learned CIT-DR pointed out that the consequential order in this case has been passed on 24/03/2023 and therefore, argued that the story narrated by the assessee, explaining the reasons for condoning the delay is an afterthought.

4. After considering the rival submissions, we observe that the erstwhile Chartered Accountant, Mr.C.V.S Balachandra Rao has also filed an affidavit and fairly conceded that he was not aware of the appeal proceedings in respect of the orders passed by the Commissioner under section 263 of the Income Tax Act, 1961 ("the Act"). It is the settled position of law that for the mistake of a counsel, assessee would not suffer. A reference can be made to the judgment of Hon'ble M.P High Court in the case of M.P.Jain Vs CIT reported in 172 ITR 0331(MP). Therefore, considering the totality of facts, we hereby condone the delay of 324 days filed by the assessee and admit the appeal for hearing.

5. Before parting, we would like to observe that reliance placed by the learned DR in the case of SRK Infracon (India) Private Limited Vs. Income Tax Officer in ITA No.8/Hyd/2022 dated 08/02/2023 is not relevant to the

facts of the present case. Because in the said case, the assessee has come up in appeal before the ITAT after passing of the order by the learned CIT(A) vis-à-vis the consequential order passed by the learned Assessing Officer and there was a delay of 988 days. Therefore, that case is distinguishable on the facts and hence will not apply to the present case.

6. The assessee has raised five grounds of appeal. However, the issue involved is limited to extent, whether the learned PCIT was justified in assuming jurisdiction under section 263 of the Act on the ground that the order passed by the learned Assessing Officer was erroneous and prejudicial to the interest of the Revenue. In this case, the assessee has filed the return of income on 26/03/2018, declaring an income of Rs.23,50,120/-. Thereafter the case of the assessee was selected for scrutiny on the ground that there was an information with the department revealing, that the assessee has deposited huge amount of cash during the demonetization period. Accordingly, the learned Assessing Officer issued notice under section 143(2) and 142(1) of the Act. The Assessing Officer, during the course of assessment proceedings, accepted the version of the assessee and considered the cash deposit of Rs.2,40,45,763/- as part of assessee's turnover and then estimated the income of the assessee @3% of the total turnover.

6.1. While examining the case record, the learned PCIT took a view that the order of the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue, in as much as the learned Assessing Officer has failed to verify the genuineness of the cash deposits in the bank account of the assessee and the AO has further erred in estimating the net profit @3%, which is not in line with the view of the ITAT Hyderabad Bench. Learned PCIT accordingly issued show cause notice dated 18/08/2021 and asked the assessee as to why the order of the learned Assessing Officer would not be declared as erroneous and prejudicial to the interest of the Revenue.

6.2. In response to the show cause notice, the assessee submitted her replies and filed the details of the cash deposits. Learned AR of the assessee explained before the learned PCIT that the cash was deposited by one Mr.Bhupendra Korida, to whom the assessee has entrusted the entire business of running the hotels and bars in Hyderabad. It was the contention of the assessee before the learned Assessing Officer and the learned PCIT that Mr.Bhupendra Korida had deposited this cash in her bank account without the knowledge of assessee and this cash had been used for making payments to various liquor manufacturers. However, the learned PCIT could not find any force in the submissions of the assessee and revised the order of the learned Assessing Officer.

7. Aggrieved with the order of the learned PCIT, assessee has come up in appeal before us. Learned counsel for the assessee vehemently argued that the order of the learned Assessing Officer was neither prejudicial nor erroneous and hence the learned PCIT has erred in assuming jurisdiction under section 263 of the Act. Learned counsel for the assessee has reiterated the submissions made before the learned Assessing Officer and the learned PCIT.

7.1. Learned DR in rebuttal pointed out that the assessee has never taken any action against Mr.Bhupendra Korida for using her bank account without her knowledge as evident from the fact that till date neither any police complaint has been filed nor any FIR has been registered against that person. Learned DR further pointed out that on the contrary, so called Mr.Bhupendra Korida is still working with the assessee. Therefore, the learned Assessing Officer has erred in not examining the facts and circumstances of the case in proper manner and hence it is the case of complete lack of enquiry on the part of the Assessing Officer.

8. After considering the rival submissions, we observe that the Assessing Officer in this case failed to conduct any enquiry in terms of the

provisions of section 68 of the Act for the cash deposits during the demonetization period by the assessee. It is further observed that the Assessing Officer has simply estimated the net profit @3% of the total turnover. We observe that the coordinate Bench of the Tribunal in the case of Jonnalagadda Sravanth Vs ITO in ITA No.92/Hyd/2018 has held that in liquor business net profit rate of 10% to be applied. Therefore, we are of the firm opinion that in this case, the learned Assessing Officer while acting as an investigator has failed to conduct any enquiries and while acting as an adjudicator has failed to take a plausible view in accordance with law. Therefore, we are of the opinion that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue and hence the learned PCIT was justified in assuming jurisdiction under section 263 of the Act. Appeal of the assessee is accordingly dismissed.

9. Before parting, we would like to clarify that the observations made by us in this order will not prejudice the consequential proceedings pending before the learned CIT(A).

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

Order pronounced in the open court on this the 1st October, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Hyderabad,
Dated: 01/10/2024
L.Rama, SPS

Copy forwarded to:

1. Smt.Kaur Gurleen, 15-4-452, Osman Shahi, Gowliguda, Hyderabad
2. The DCIT, Circle-5(1), IT Towers, Hyderabad
3. The Pr.CIT-4, Hyderabad
4. The DR, ITAT, Hyderabad
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