

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “A” BENCH, BANGALORE**

**Before Ms. Padmavathy S., Accountant Member
and
Shri Prakash Chand Yadav, Judicial Member**

ITA No. 1776/Bang/2024 (Assessment Year: 2018-19)		
Puttegowda Ravikumar 201, Belvadi Post Koorgahaly, Mysore 570018 PAN – AEZPR9904H (Appellant)	vs.	The Income Tax Officer-1(1) 21/16, 'Aayakar Bhavan' Residency Road, Nazarabad Mysore 570010 (Respondent)
Assessee by:	Shri Tharun Kothari, CA	
Revenue by:	Ms. Neha Sahay, JCIT-DR	
Date of hearing:	24.10.2024	
Date of pronouncement:	24.10.2024	

ORDER

Per: Padmavathy S., A.M.

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] dated 30.07.2024 for AY 2018-19.

2. The assessee has raised the following grounds of appeal: -
- “1. *The order of the learned Assessing Officer in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.*
 2. *The appellant denies himself liable to be assessed to a total income of Rs.52,96,021/- for the impugned assessment year 2018-19 on the facts and circumstances of the case.*
 3. *The learned CIT(A) ought to have raised a defect for delay in filing the appeal, on the facts and circumstances of the case.*

4. *The learned CIT(A) ought to have provided another opportunity of hearing in the interest of natural justice and equity before dismissing the appeal, on the facts and circumstances of the case.*
5. *Grounds on disallowance made as per rule 87, Rs.18,51,341:*
 - a. *The authorities below are not justified in disallowing the contribution made to provident fund, ESI by relying on rule 87 on the facts and circumstances of the case.*
 - b. *The contribution made to provident fund, ESI is within the limit prescribed under rule 87 of the Income Tax Rules on the facts and circumstances of the case.*
 - c. *Without prejudice, the excess contribution made to PF and ESI is related to the business of the appellant and ought to be allowed as deduction under section 37 of the Act on the facts and circumstances of the case.*
6. *Grounds on addition made under section 69 of the Act, 20,00,000/-*
 - a. *The authorities below are not justified in making addition under section 69 of the Act, on the facts and circumstances of the case.*
 - b. *The addition under section 69 of the Act finds no applicability where the investment is recorded in the books of account, on the facts and circumstances of the case.*
 - c. *The provisions of section 69 of the Act finds no applicability where the nature and source of investment stands explained on the facts and circumstances of the case.*
 - d. *Without prejudice, the case of appellant was selected for scrutiny to verify "excess contribution to Provident Fund, Superannuation Fund or Gratuity Fund", thus, no addition under section 69 of the Act is warranted on the facts and circumstances of the case.*
7. *That it is settled proposition of law that "consent cannot confer jurisdiction" on the facts and circumstance of the case.*
8. *The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernable from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
9. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

10. *In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed and appropriate relief be granted in the interest of justice and equity.*

3. The assessee is a manpower contractor and has supplied man power to Bharath Earth Movers Ltd., Mysore. The assessee filed the return of income for AY 2018-19 on 08.10.2018 declaring total income of Rs. 7,95,760/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) issued notices u/s. 142(1) of the Income Tax Act, 1961 (the Act) calling on the assessee to furnish details pertaining to the excess contribution to PF and superannuation fund and since the assessee did not respond to the said notices completed the assessment u/s. 144 of the Act. The AO while completing the assessment made addition towards excess contribution to PF and superannuation fund and also addition u/s. 69 towards purchase of house property shown as addition to fixed assets in the depreciation schedule.

4. Aggrieved, assessee filed further appeal before the CIT(A). There was a delay of 760 days in filing the appeal before the CIT(A). The assessee did not file any petition for condonation of delay and also did not file any response to the notice issued by the CIT(A). Therefore, the Id. CIT(A) dismissed the appeal without condoning the delay.

5. We have heard the rival contentions and perused the material on record. The learned A.R., during the course of hearing, submitted an affidavit from the Tax Consultant of the assessee stating that it was his email ID which was provided to the Tax Department for communication in assessee's case and that due to the volume of mails received in the said ID from various clients the notices issued in assessee's case went unnoticed. The learned A.R. in this

regard submitted that the assessee is not well aware of the income tax proceedings and is dependent on his Tax Consultant. The learned A.R. further submitted that since the Tax Consultant has missed the notices issued by the lower authorities the assessee could not appear before them to file the condonation petition and to contend the additions made on merits. Accordingly, the learned A.R. prayed for one more opportunity. Considering the fact that the Id. CIT(A) dismissed the appeal without condoning the delay and that the assessee did not file condonation petition before the CIT(A), in the interest of natural justice and fair play we are inclined to give one final opportunity to the assessee. The assessee is directed to file a condonation petition before the CIT(A) providing reasons for delay in filing the appeal before the CIT(A). The CIT(A) is directed to consider the petition for condonation and decide the admission of the appeal in accordance with law. The CIT(A) is further directed to call for necessary details to adjudicate the appeal on merits based on the decision on the condonation petition of the assessee. It is ordered accordingly.

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

Order pronounced in the open Court on 24th October, 2024.

Sd/-
(Prakash Chand Yadav)
Judicial Member

Sd/-
(Padmavathy S.)
Accountant Member

Bengaluru, Dated: 24th October, 2024
n.p.

Copy to:

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT, concerned*
- 4. The DR, ITAT, Bangalore*
- 5. Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bangalore*