

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

I.T. A. No.1254/Bang/2015
(Assessment Year : 2009-10)

Sri Lokesh Chandrappa,
No.138, Ganigarapalya,
Thalathattapura, Kanakapura Main Road,
Banashankari, Bangalore-560 062.
PAN AFWPC 6561P

.... Appellant.

Vs.

Income Tax Officer,
Ward 3(2)(4), Bangalore.

..... Respondent.

Appellant By : Shri B.S. Balachandran, Advocate.

Respondent By : Shri M.K. Biju, Addl. CIT (D.R)

Date of Hearing : 27.10.2016.

Date of Pronouncement : 9.11.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

ITA No.1254/Bang/2015 Lokesh Chandrappa

This appeal by the assessee is directed against the order dt.21.3.2013
of the Commissioner of Income Tax (Appeals) for the Assessment Year
2009-10.

2. There is a delay of 169 days in filing the appeal. The assessee has filed a petition for condonation of delay which is supported by an Affidavit.

3. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the petition for condonation of delay in filing the appeal. It is stated that the assessee has tried his hand in the business but it was not successful therefore the business was closed down. The assessment in this case was passed *exparte* against which the assessee filed appeal before the CIT (Appeals) which was also dismissed *exparte*. Thus it is pleaded that the assessee was not aware of the impugned order passed by the CIT (Appeals) and further the assessee was depending upon the Authorised Representative who was representing the assessee in the tax matters. Therefore the delay in filing the appeal is neither intentional nor willful because of first experience of the assessee in dealing with the tax matter.

4. The learned Authorised Representative of the assessee has submitted that the appeal of the assessee was dismissed *exparte* because of the tax consultant of the assessee failed to appear. The

assessee was under bona fide belief that the representative of the assessee will take care of the tax matter and will take the appropriate step but since he failed to act therefore the assessee could not take the step to file the appeal within the period of limitation. He has pleaded that the delay in filing the appeal may be condoned.

5. On the other hand, the learned Departmental Representative has submitted that the assessee has failed to explain the reasonable cause for filing the appeal within the period of time.

6. Having considered the rival submissions as well the relevant material on record, we find that the assessee is an individual and it appears to be the first experience with the tax matter. The explanation of the assessee has to be analysed in the context whether the reasons for delay as explained by the assessee are bona fide or merely a device to take benefit or an attempt to take undue advantage of filing the appeal belatedly. We find that it does not emerge from the facts and circumstances of the case that by filing the appeal belatedly the assessee has made an attempt to take undue advantage or benefit. Accordingly,

having regard to the facts and circumstances of the case, we condone the delay of 169 days in filing the appeal.

7. The assessee has raised the following grounds :

1. The orders of the Learned Lower Authorities are bad in law and contrary to the evidences and facts on record.
2. The Learned Assessing Officer erred on facts and in law in treating the cash deposits in the bank account of the appellant as unexplained cash credits without giving sufficient and substantial opportunity of being heard in the matter.
3. Without prejudice to the above ground, the Learned Assessing Officer erred in treating the entire cash deposits and turnover as income without considering the withdrawals and without working of the peak credit in the bank account.
4. The Learned CIT(A), also erred in upholding the addition exparte without giving sufficient and substantial opportunity of hearing in the matter.
5. The Learned CIT(A) also erred in upholding the addition even in the exparte order without working out the income or loss with respect to the turnover in the bank account .
6. The Appellant craves leave to add any other ground or modify or revise the grounds taken at the time of hearing before the Hon'ble Income-tax Appellate Tribunal, Bangalore.

8. The only issue arises for our consideration and adjudication is whether in the facts and circumstances of the case, the Assessing Officer has erred in making an addition under Section 68 of the Income Tax Act, 1961 (in short 'the Act') on account of cash deposits in Bank. During the course of assessment proceedings, the Assessing Officer noted that as

per AIR communication, deposits amounting to Rs.58,80,250 has been made in the assessee's bank account with Indian Overseas Bank. Despite several opportunities provided the assessee failed to appear and explain the source of the cash deposits. Though the assessee filed the appeal before the CIT (Appeals) however due to non-appearance of the assessee, the appeal of the assessee was dismissed by the CIT (Appeals).

9. Before us, the learned Authorised Representative of the assessee has submitted that addition made by the Assessing Officer under Section 68 of the Act in respect of the deposits made in the bank is not sustainable as the bank passbook is maintained by the Bank as an agent and it cannot be considered as books of accounts of the assessee. Thus when there is no credit in the books of accounts of the assessee then the addition made under Section 68 of the Act on account of unexplained cash credit is not sustainable. In support of his contention, he has relied upon the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Bhaichand H Gandhi** 11 Taxman 59. The learned Authorised Representative has also relied upon the decision of the Lucknow Benches of this Tribunal dt.25.4.2013 in the case of **ITO Vs. Kamal Kumar Mishra**

in ITA No.398/LKW/2012 and submitted that by following the decision of Hon'ble Bombay High Court (supra), the Tribunal has decided the issue in favour of the assessee.

10. Alternatively, the learned Authorised Representative of the assessee has submitted that when there is a corresponding withdrawal from the Bank, then addition cannot be more than the peak credit in the Bank account. Thus the learned Authorised Representative has submitted that the withdrawal from the Bank should be considered as a source of subsequent deposit.

11. On the other hand, the learned Departmental Representative has submitted that the assessee has failed to explain the source of deposit despite the sufficient opportunities were granted by the Assessing Officer as well as CIT (Appeals). Further when the deposits in the Bank account were not explained by the assessee then the same is liable to be added under Section 69 of the Act if not 68 of the Act. He has relied upon the orders of the authorities below.

12. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made addition of

Rs.58,80,250 on the basis of AIR information that the assessee has deposited cash in the Bank account during the financial year relevant to the assessment year under consideration. Thus addition has been made by the Assessing Officer as an unexplained cash credit under Section 68 of the Act. The Hon'ble Bombay High Court in the case of CIT Vs. Gandhi (supra) has held that the passbook maintained by the Bank could not be regarded as books of account of the assessee much less book maintained by the assessee. Therefore the Hon'ble High Court has upheld the order of the Tribunal in deleting the addition made under Section 68 of the Act on account of deposits in Banks. In view of the said decision of the Hon'ble Bombay High Court, we find force and substance in the alternate plea of the learned Authorised Representative of the assessee that even if an addition is to be made it cannot be more than the peak credit in the bank account. Further since the assessee's case has been decided by the Assessing Officer as well as the CIT (Appeals) without any representative therefore in the facts and circumstances of the case, we set aside this matter to the record of the Assessing Officer for granting one more opportunity to the assessee for explanation of the source of cash deposit

and in any case the addition if any it should not be more than the peak credit in the bank account.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on the 9th day of Nov.,2016.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dt. 09.11.2016.

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore