

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.2749/Bang/2017
Assessment year : 2013-14

Mr. Mohamed Ibrahim Ansarahmed, Prop. Speed Transport, Plot No.85, Ward No.3, 5 th Cross, Kumareshwar Nagar, Dharwad. PAN: ALOPM 9761F	Vs.	The Assistant Commissioner of Income Tax, Circle 2(1), Navanagar, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Preethi S. Patel, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	28.07.2021
Date of Pronouncement	:	28.07.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals), Hubli dated 29.9.2017 for the AY 2013-14.

2. The brief facts of the case are that the assessee is a transport contractor engaged in business of transportation of chasis, buses/trucks on contract basis. During the assessment proceedings, the AO noticed that contract receipts reported in P&L account stood at Rs.6,08,39,281 and net profit at Rs.40,25,727. The AO observed huge expenditure on account of toll tax, conveyance, diesel, driver batta, salary, temporary registration charges, etc. and called the assessee to produce supporting documents

which was not done by the assessee. However, the assessee was able to produce documents only to the extent of Rs.34 lakhs against the current liability shown at Rs.38,83,161. Taking into account such discrepancies, the AO proceeded to invoke the provisions of section 145 of the Income-tax Act, 1961 [the Act] and rejected the book results.

3. The AO also found from Form 26AS that the total receipt was Rs.6,37,18,000 as against Rs.6,03,39,281 shown in the P&L account. The assessee's NP ratio for the current year stood at 6.61% as against 5.98% in AY 2012-13. Keeping all these factors in mind, the AO rejected the book results and estimate income at Rs.63,71,800 @ 10% of gross receipts and made an addition of Rs.39,25,730 to which the assessee agreed. However, later the assessee filed an application to the AO seeking rectification of the order u/s. 143(3) on the ground that full credit for TDS was not given. Accordingly, AO passed an order u/s. 154 on 3.6.2016 which was served on assessee on 7.6.2016.

4. The assessee preferred appeal before the CIT(Appeals) against the assessment order u/s. 143(3) dated 9.1.2016. The CIT(A) observed that the appeal is against the order u/s. 154 though assessee mentioned it as appeal against order u/s. 143(3) r.w.s. 154. He was of the view that for contesting the order u/s. 143(3) the appeal was filed beyond the time limit and no application for condonation of delay was filed and hence the CIT(A) rejected the appeal. Against this, assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. In this case, the assessee filed appeal before the CIT(A) against the assessment order passed u/s. 143(3) of the Act. Further there was a delay of 126 days in filing the appeal before the CIT(A). This was not pointed out to the assessee and hence the assessee had not filed any application for condonation of delay in filing appeal before the CIT(A). The assessee was

under a bonafide belief that there was no delay and hence no petition for condonation of delay was filed before the CIT(A). Even otherwise, the CIT(A) dismissed the appeal for non-filing of petition for condonation of delay and correcting the defect noticed by him. In the interest of justice, he must have given an opportunity to the assessee which he failed to do so. Before us, the assessee filed condonation petition for delay of 126 days in filing appeal before CIT(A). In our opinion, it is appropriate to remit the entire issue to the CIT(Appeals) to consider the condonation petition filed by the assessee in proper perspective and decide accordingly. It is ordered accordingly. We refrain from going into the merits of the case on the additions made by the AO.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 28th day of July, 2021.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 28th July, 2021.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.