

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “SMC-C” BENCH, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.304/Bang/2021: Asst.Year 2006-2007

M/s.Gowdara Jayadevappa Silks & Sarees, No.672, Chowkipet Davangere – 577 001. PAN : AADFG2804P.	v.	The Asst.Commissioner of Income-tax, Circle – 1 Davangere.
(Appellant)		(Respondent)

Appellant by : Sri.K.Y.Ningoji Rao, CA
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 14.09.2021	Date of Pronouncement : 20.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 14.08.2017. The relevant assessment year is 2006-2007.

2. There is a delay of 497 days in filing this appeal. The assessee has filed a petition for condonation of delay along with an Affidavit stating therein the reasons for delayed filing of this appeal. The reasons stated in the Affidavit for belated filing of this appeal is that the assessee for identical relief sought in this appeal had also filed a rectification application before the first appellate authority within the specified period. It was stated that the CIT(A) directed the assessee to file rectification application electronically, and since it was not possible to file rectification application electronically, the assessee filed this appeal within the short period (immediately when it was realized that the rectification application cannot be filed electronically). Therefore, it was prayed that the delay

in filing this appeal is unintentional and out of bonafide belief that the prayer of the assessee would be allowed in the rectification application. The learned AR also relied on various case laws for the proposition that the words “sufficient cause” has to be liberally interpreted. It was also submitted that the approach of the Courts must be pragmatic for advancing substantial justice.

2.1 I have heard rival submissions and perused the material on record. The prayer sought in the rectification application and this appeal is identical. Copy of the rectification application is placed on record. The rectification application was filed before the first appellate authority within the specified period. The assessee was bonafidely pursuing the remedy by filing rectification application. When it was noticed that the rectification application could not be filed electronically, the assessee filed this appeal immediately. Therefore, delay in filing this appeal cannot be attributed to any laches on the part of the assessee. There is sufficient cause in the facts and circumstances of the case to condone the delay in filing this appeal. Accordingly, the delay in filing this appeal is condoned and I proceed to dispose of the appeal on merits.

3. The solitary issue argued was that whether the CIT(A) was justified in upholding the addition of Rs.3,84,730 disregarding that the impugned amount was offered to tax by the assessee in assessment years 2007-2008 and 2008-2009, which tantamount to double taxation.

4. The brief facts of the case are as follows:-

The Assessing Officer, during the course of assessment proceedings, noticed difference in purchase by the assessee from M/s.Ajay's Bangalore. The total purchases by the assessee from M/s.Ajay's Bangalore as appearing in assessee's books was Rs.45,07,570, whereas, as per the extracts of accounts received from M/s.Ajay's Bangalore was Rs.38,74,182. After taking into consideration the creditors to the extent of Rs.2,53,528 and non-granting of discount of Rs.4,495, the Assessing Officer made an addition of Rs.3,84,730 stating that the difference is on account of suppression of purchases.

5. Aggrieved by the addition of Rs.3,84,730, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, it was contended that the difference was due to certain accounting discrepancies in the books of account of the assessee and M/s.Ajay's Bangalore and not due to suppression of purchases, as alleged by the Assessing Officer. The assessee filed elaborate written submission before the CIT(A). The extracts of the same are reproduced at pages 14 to 19 of the impugned order. The CIT(A) rejected the plea of the assessee by observing as under:-

"6b. The submissions are considered. The fact that the assessee himself has offered the income for the A.Y. 2008-09 clearly establishes the fact that this is taxable income for the current year. The AO has rightly taxed it and no interference is called for. Thus, the ground is fails."

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR has filed

a paper book comprising of 152 pages enclosing therein copies of the invoices made out by M/s.Ajay's Bangalore to the assessee towards the sale of goods, copy of the ledger account of M/s.Ajay's Bangalore for the financial year 2005-2006, 2006-2007 and 2007-2008, copy of the audited annual statement, copy of the rectification application filed before the CIT(A), copy of the communications with the CIT(A) (CPC) and various case laws relied on by the assessee. The learned AR reiterated the submissions made before the Income Tax Authorities.

7. The learned Standing Counsel supported the orders of the Assessing Officer and the CIT(A).

8. I have heard rival submissions and perused the material on record. The assessee has filed abstracts of assessee's transaction with M/s.Ajay's Bangalore for the year ending 31.03.2006 (abstract of transaction in assessee's books as well as in the books of account of M/s.Ajay's Bangalore). The alleged difference between the two accounts (M/s.Ajay's Bangalore and assessee) as on 31.03.2006 was reconciled after the close of the accounting year. The differences were due to certain accounting discrepancies in the books of account of the assessee as well as M/s.Ajay's Bangalore. The difference cannot be termed as suppression of purchases in the strict sense. According to the assessee, the difference is duly reconciled and was accounted as income for the assessment years 2007-2008 and 2008-2009. The assessee has filed evidence to show that the addition made for assessment year 2006-2007 amounting to Rs.3,84,760 was

shown as income for assessment years 2007-2008 and 2008-2009. The relevant extract of the submission of the assessee to show that the impugned amount is shown as income for assessment years 2007-2008 and 2008-2009, reads as below:-

“6. The audited Profit and Loss account reflects that a sum of Rs.29,60,653.64 was shown as income on account of Discounts and rebates for the A.Y. 2007-08 and a sum of Rs.34,86,300.01 was shown as income on account of Discounts and rebates for the A.Y. 2008-09. The copy of the audited annual statements account for the A.Y.2008-09 which also reflects the corresponding figures for the A.Y. 2007-08. Refer audited Annual Accounts at marked pages 95 to 116 of the paper book and the profit and loss account at marked page 99 of the paper book.

7. The copy of the printout of ledger account of M/s.Ajay’s of Bangalore, as appearing in the appellant’s books of account, for the financial year 2005-06 reflects a sum of Rs.2,93,544/- was accounted as income for the A.Y. 2006-07 by way of discounts and rebates from M/s.Ajay’s Bangalore. Refer ledger account at marked pages 77 to 83 and at pp 82 and 83 of the paper book.

8. The copy of the printout of ledger account of M/s.Ajay’s Bangalore, as appearing in the appellant’s books of account, for the financial year 2006-07 reflects a sum of Rs.67,544/- was accounted as income for the A.Y. 2006-07 by way of discounts and rebates from M/s.Ajay’s Bangalore – Refer ledger account at marked pages 77 to 83 and at pp 82 and 83 of the paper book.

9. The copy of the printout of ledger account of M/s.Ajay’s Bangalore, as appearing in the appellant’s books of account, for the financial year 2007-08 reflects a sum of Rs.6,79,462/- was accounted as income for the A.Y. 2008-09 by way of discounts and rebates from M/s.Ajay’s Bangalore. Refer ledger account at marked pages 90 to 94 and at pp 94 of the paper book.”

8.1 If the contention of the assessee that the assessee had declared the impugned addition made in A.Y. 2006-2007 as income for assessment years 2007-2008 and 2008-2009 is correct, then the same tantamounts to double taxation. It is

settled position of law that the same income cannot be taxed twice in the hands of the assessee. In this contention, I refer to the following judicial pronouncements:-

- (i) CET v. Raj Kumar Singh 83 ITR 92 (SC).
- (ii) Kori V.B. v. Asst.Professional Tax Officer 192 ITR 279 (Kar.)
- (iii) CIT v. Manjunatha Motor Service 197 ITR 321 (Kar.)

8.2 In view of the above judicial pronouncements, I direct the A.O. to examine whether the impugned addition of Rs.3,84,760 is shown as income in assessment years 2007-2008 and 2008-2009. If it is found by the A.O. that the assessee had disclosed the impugned income as income for the assessment years 2007-2008 and 2008-2009, the Assessing Officer shall delete the addition of Rs.3,84,760 for assessment year 2006-2007. With these directions, I restore this case to the files of the Assessing Officer. It is ordered accordingly.

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

Order pronounced on this 20th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Devangere.
4. The CIT, Devangere.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore