

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 149/VIZ/2020
(Asst. Year :2012-13)**

M/s. Aruna Motors Private vs. ACIT, Circle-2(1),
Ltd., D.No. 48-10-12/1, Vijayawada.
Service road, Ramachandra
Nagar, Opp. NTR Health
University, Vijayawada.

PAN No. AAICA 1800 H
(Appellant)

(Respondent)

Assessee by : Shri A.Chakradhar, CA.

Department by : Shri N. Gopi Krishna, Sr.DR

Date of hearing : 21/04/2021.

Date of pronouncement : 29/04/2021.

ORDER

PER D.S. SUNDER SINGH, ACCOUNTANT MEMBER

This appeal has been preferred by the assessee against the order dated 07/08/2018 impugned herein passed by the Ld.Commissioner of Income Tax (Appeals) [for short, "ld. CIT(A)"] Vijayawada u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2012-13.

2. There was a delay of 632 days in filing the appeal. The assessee stated in its petition that the tax matters were entrusted

to the Authorized Representative Shri A.C. Gangaiah, CA who had expired on 06/10/2016 and the said Authorized Representative did not file the appeal and the assessee was under the impression that appeal was already filed. On verification of the fact from the office of Late Mr. Gangaiah it was ascertained that the appeal was not filed, hence, he has taken up the matter with another A.R. who has filed the appeal which caused the delay of 632 days and therefore requested to condone the delay.

3. We have heard both the parties and gone through the affidavit and condonation petition filed by the assessee. The assessee established the fact that due to lapse of the Ld.A.R of the assessee who had expired, the appeal could not be filed. The facts stated in the affidavit / condonation petition were not controverted by the Department. The assessee is not going to get any benefit by delaying the appeal and it was not the case of deliberate attempt or the intention of the assessee to file the appeal belatedly. Hon'ble High Court of Telangana in the case of Thunuguntla Jagan Mohan Rao vs DCIT, Circle(2)1, Hyderabad, in ITTA No.20/2020, dated 13/08/2020 condoned the delay of 154 days and held that while condoning the delay, the court should be liberal and show utmost consideration to the suitor if the explanation does not smack of malafide or it is not put forth as part of dilatory strategy. The Hon'ble Supreme Court on similar facts of having no knowledge of passing the order, in the case of Senior Bhosale Estate (HUF) vs Assistant Commissioner of Income tax in civil appeal No.6671 – 6676 of 2010 dated 7th November 2019, has condoned the delay of 1754 days. We extract the relevant part of the order of Hon'ble Apex court in Senior Bhosale

Estate (HUF) [2019] 112 taxmann.com 134 (SC) which reads as under:

3. The appellant(s) had asserted that they had no knowledge about passing of order dated 29.12.2003, until they were confronted with the auction notices in June 2008 issued by the competent authority.

4. Soon thereafter, the appellant(s) filed appeal(s) accompanied by the subject application(s) on 19.07.2008. Notably, the respondent(s) did not expressly refute the stand taken by the appellant (s) - that they had no knowledge about passing of order dated 29.12.2003 until June, 2008. Unless that fact was to be refuted, the question of disbelieving the stand taken by the appellant(s) on affidavit, cannot arise and for which reason, the High Court should have shown indulgence to the appellant(s) by condoning the delay in filing the concerned appeal(s). This aspect has been glossed over by the High Court.

5. Accordingly, these appeals are allowed. We set aside the impugned order of the High Court and relegate the parties before the High Court, by allowing the civil application(s) filed by the appellant(s) for condonation of delay in filing the concerned appeal.

In the instant case, the assessee was under the bonafide impression of having filed the appeal by the Ld. A.R of the assessee, but came to know the fact of not having filed the appeal when it had approached the office of the Ld.A.R. Therefore, following the orders of the Hon'ble Supreme Court, the Hon'ble High Court of Telangana (supra) and the principles laid by Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji [1987] 167 ITR 471 (SC), we find it justifiable to condone the delay and admit the appeal of the assessee in the interest of justice. Accordingly the appeal is admitted.

4. In this case, the assessment was completed u/sec. 143(3) by an order dated 09/03/2015. In the assessment order, the AO made the addition relating to the excess depreciation of

Rs.19,59,263/- and unexplained cash credits amounting to Rs.9.00 lakhs. On appeal, Id. CIT(A) has confirmed the additions and assessee filed the appeal the appeal before the Tribunal.

5. During the appeal hearing the Ld.A.R argued that complete information was given in the statement of facts and the grounds of appeal but the Ld.CIT(A) did not consider the explanation given in the statement of facts and the grounds of appeal and summarily rejected the contention of the assessee and decided the appeal, hence, requested to remit the matter back to the file of the Ld.CIT(A) to reconsider the issues in detail. He also assured the court that the assessee would cooperate with the department for disposal of the appeal.

6. On the other hand the Ld.DR objected for remitting the matter back to the file of the Ld.CIT(A) and argued that sufficient opportunities were given by the Ld.CIT(A) during the appeal proceedings, hence, requested to uphold the order of the Ld.CIT(A)

7. We, have considered submissions of both the parties and perused the material on record. In the instant case no doubt, the Ld.CIT(A) has given sufficient opportunities to the assessee and Ld.assessee did not respond to the notices given by the Ld.CIT(A), hence we do not appreciate the attitude of the assessee in not complying with the statutory notices. However, we, observe from the order of the Ld.CIT(A) that she has not passed the detailed speaking order considering all the facts mentioned in the statement of facts and the grounds of appeal. Though the Ld.CIT(A) is permitted to pass the ex-parte order, the same

should be after considering the facts and merits of the case. Therefore, in the interest of justice, we, remit the matter back to the file of the Id. CIT(A) with a direction to decide the appeal afresh on merits after giving opportunity of hearing to the assessee. The assessee is directed to comply with the notices and cooperate with the department and submit the necessary details for disposal of appeal before the Ld.CIT(A). Accordingly, appeal of the assessee is allowed for statistical purpose.

8. In the result, appeal filed by the assessee stands allowed for statistical purpose.

Order Pronounced in open Court on this 29th day of April, 2021.

Sd/-
(N.K. CHOUDHRY)
Judicial Member

sd/-
(D.S. SUNDER SINGH)
Accountant Member

Dated: 29th April, 2021.

vr/-

Copy to:

1. *The Assessee -M/s. Aruna Motors Private Ltd., D.No. 48-10-12/1, Service road, Ramachandra Nagar, Opp. NTR Health University, Vijayawada.*
2. *The Revenue -ACIT, Circle-2(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.