

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 99/H/2018 Assessment Year: 2009-10		
Mahesh Bangaru, Hyderabad. PAN - AFIPB 3441D (Appellant)	Vs.	Income-tax Officer, Ward - 4(1), Hyderabad. (Respondent)
Assessee by:		Shri S. Rama Rao
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		10/06/2021
Date of pronouncement:		18/06/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A) - 1, Hyderabad's order dated 03/07/2017 for AY 2009-10 involving proceedings u/s 144 of the Income Tax Act, 1961 ; in short "the Act" on the following grounds:

" 1) The order of the learned Commissioner of Income-tax (Appeals) is erroneous both on facts and in law.

2) The learned Commissioner of Income-tax (Appeals) erred in confirming the addition made by the Assessing Officer of Rs.14,54,673/- without considering the fact

that the turnover amounted to Rs.32,54,662/- but was taken by the Assessing Officer at Rs.12,15,180/-

3) The learned CIT (A) ought to have considered the fact that the total deposits made into the bank account were only Rs.19,67,000/- and the turn over for the year under consideration was Rs.32,54,662/- and that, therefore, no addition can be made.

4) The learned CIT (A) erred in confirming the disallowance made u/s 80DDB of Rs. 40,000/- and u/s 80C of Rs.90,000/-.

5) Any other ground or grounds that may be urged at the time of hearing. "

2. We notice at the outset that assessee's instant appeals suffer from 59 days delay. To this effect, the assessee filed an affidavit wherein affirming, inter-alia, that at the relevant point of time assessee's wife and assessee himself fell sick, which caused the impugned delay in filing of the instant appeals. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of 59 days in filing the appeals is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Cases are now taken up for adjudication on merits.

3. Brief facts of the case are that the assessee filed his return of income for the AY 2009-10 on 09/09/2009 declaring total income of Rs. 1,46,757/-. Subsequently, the case was selected for scrutiny under CASS and statutory notice was issued to the assessee on 23/08/2010, which was returned unserved as the assessee was not available in the address given in the return. Thereafter, several notices were issued by the AO to the assessee, but, none of the notices could be served. Finally, a notice on 21/12/2011 was served on the assessee based on the address ascertained from the bank statement. Since there was no compliance to the said notice, the AO passed exparte order u/s 144 of the Act by making the addition of Rs. 13,60,139/- towards unexplained deposit in bank account.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) confirmed the order of AO.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

6. In the course of hearing, it was pointed out by the learned counsel of the assessee that the AO either not allowed time to produce detailed explanation for each of

the deposit made in cash and cheques in the SB A/c, which is against the principles of natural justice. Therefore, it would be in the interest of justice, the matter may be restored to his file for deciding various grounds of appeal on merits. The learned DR agreed with the aforesaid statement of the learned AR.

7. We have considered the facts of the case and the request made by the learned AR. We are of the view that interest of justice will be served if the matter is restored to the file of AO for deciding various grounds of appeal of the assessee on merits. Accordingly, the AO is directed to afford reasonable opportunity of being heard to the assessee and thereafter decide the appeal on merits. We direct the assessee to appear before AO on or before 30th September, 2021 with all the relevant evidences; at his own risk and responsibility to be followed by three effective opportunities of hearing.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 18th June, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18th June, 2021.

Kv

Copy to :

<i>1</i>	<i>Sri Mahesh Bangaru, No. 1-9-269, Adikmet, Ramnagar, Hyderabad – 500 044</i>
<i>2</i>	<i>ITO, Ward – 4(1), IT Towers, AC Guards, Hyderabad.</i>
<i>3</i>	<i>CIT(A) – 1, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT - 1, Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>