

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

BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT

ITA No.672/Bang/2020
Assessment Year : 2008-09

M/s. Maruthi Traders, Maruthi Nilaya, Belagur, Hosadurga Taluk, Chitradurga District, Karnataka, India. PAN : AAEFM 4207 H	Vs.	Income Tax Officer, Ward -1, Chitradurga.
Appellant		Respondent

Assessee by	:	Shri. C. Ramesh, CA
Revenue by	:	Shri. Ganesh R. Ghale, Jr. Standing Counsel

Date of hearing	:	16.02.2021
Date of Pronouncement	:	18.02.2021

ORDER

This is an appeal of the assessee against the order dated 28.08.2020 of CIT(A), Davangere, relating to Assessment Year 2008-09.

2. The assessee is a partnership firm. The firm carries on business of trading in Coconut and Copra. For Assessment Year 2008-09, the assessee filed return of income declaring total income of Rs.9,930/-. An order of assessment under section 143(3) r.w.s. 144A of the Income Tax Act, 1961 (hereinafter called ‘the Act’) was passed by the AO determining the total income of the assessee at a sum of Rs.26,97,364/-. There were 6 different additions made to the total income of the assessee. Against the said order of the AO, assessee filed appeal before CIT(A) and the CIT(A) sustained 4 additions made by the AO. Against the order of the CIT(A),

the assessee filed appeal in ITA No.1359/Bang/2012 and the Tribunal by order dated 07.03.2014 remanded the matter to the file of AO with specific directions to afford opportunity of being heard to the assessee.

3. The AO passed an order dated 15.04.2014 giving effect to the directions of the Tribunal in which the AO confirmed the additions sustained by the CIT(A). According to the assessee, the AO did not afford any opportunity of being heard to the assessee as directed by the Hon'ble ITAT. The assessee therefore filed an appeal before the CIT(A) against the order of the AO dated 15.04.2014 giving effect to the directions of the ITAT. There was a delay of 156 days in filing the appeal before the CIT(A). The reasons for the delay were explained by the assessee in an Affidavit filed by partner of the assessee in which it has been stated that the order of the AO dated 15.04.2014 was served on the firm only on 20.10.2014. Since the AO did not afford opportunity of being heard to the assessee, the assessee was advised by its Chartered Accountant to file an application before the AO requesting for opportunity of hearing. It appears that the assessee filed a letter dated 20.10.2015 before the AO requesting for opportunity of being heard. No action was taken by the AO on the said letter. In the meanwhile the managing partner was admitted to the hospital for a surgery and was advised bed rest. Since no communication came from the AO, the assessee approached another Chartered Accountant who advised them to file an appeal. It is these circumstances that there was a delay of 156 days in filing the appeal before CIT(A).

4. The CIT(A) however refused to condone the delay in filing the appeal holding that the assessee was guilty of negligence and want of due diligence.

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

6. I have heard the rival submissions. The CIT(Appeals) did not dispute the facts stated in the affidavit. The Hon'ble Madras High Court in the case of CIT v. Sanmac Motor Finance Ltd. 322 ITR 309 (Mad) took the view that if the explanation for the delay does not smack of malafides and is not by way of dilatory strategy, the court must condone the delay. According to CIT(A), the bonafides of assessee has to be seen. According to him, in the case of assessee, reasons given are not attributable to any bonafides and therefore the delay in filing the appeal should not be condoned. As already stated the reasons given by the assessee before the CIT(Appeals) in the form of an affidavit for the delay in filing the appeal have not been disputed by the CIT(Appeals). In such circumstances, there existed bonafide reasons for not filing the appeal before the CIT(A) in time. In the circumstances, the CIT(A) should have condoned the delay in filing the appeal. In fact, the decision of the Hon'ble Madras High Court in the case of Sanmac Motor Finance Ltd. (supra) will support the plea of assessee in the facts and circumstances of the case for condonation of delay in filing the appeal. We therefore condone the delay in filing the appeal by the assessee before the CIT(Appeals).

7. The order of the CIT(Appeals) is set aside and the CIT(Appeals) is directed to decide the appeal on merits after affording the assessee opportunity of being heard.

8. For statistical purposes, the appeal of assessee is treated as allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V VASUDEVAN)
Vice President

Bangalore,
Dated : 18.02.2021
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.