

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA No.1207/Hyd/2016		
Assessment Year: 2009-10		
Sri Vuppala Raj Kumar, Siddipet PAN:ACCPV3280D (Appellant)	Vs.	Income Tax Officer Ward-1 Siddipet (Respondent)
Assessee by:	Sri K.C Devdas	
Revenue by:	Smt. Anjala Sahu, DR	
Date of hearing:	28/04/2021	
Date of pronouncement:	05/05/2021	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2009-10 against the order of the CIT-7, Hyderabad, dated 25.01.2016 u/s 263 of the I.T.Act. At the outset, it is noticed that there is a delay of 165 days in filing of the appeal before the Tribunal and the assessee has filed an application for condonation of delay stating as under:

*"BEFORE THE INCOME-TAX APPELLATE TRIBUNAL: -BENCH
: HYDERABAD I.T.A.NO.
A.Y. 2009-10*

*VUPPALA RAJ KUMAR
No.7-3-60, Old Gunj,
Siddipet*

*Hon'ble Pr.CIT-7,
Hyderabad*

APPELLANT

RESPONDENT

PETITION PRAYING FOR CONDONATION OF DELAY:

I, Vuppala Rajkumar Son of Sri V.Shekaram, aged about 57 years resident of No.7-3-60, Old Gunj, Siddipet, do solemnly affirm and state as under:-

The assessee is an individual. The assessee is carrying on business in Kirana & General items. For the asst. year 2009-10 the assessee filed return of income on 08.09.2010 declaring total income of Rs.1,60,400/-. The case was taken up for scrutiny in the light of information that there were cash deposits to the tune of Rs.33,44,984/- in ING Vysya Bank Ltd, Siddipet. Further, developments in the case are submitted hereunder in chronological order:

a. The scrutiny assessment was completed vide order dated 29.11.2011 estimating the business income at 5% on turnover of Rs.37,09,685/- which includes the said bank deposits. Thus, the total income was determined at Rs.2,07,961/- which includes bank interest of Rs.3,931/-.

b. The order u/s.143(3) was subjected to revision u/s.263 of the IT Act by the Hon'ble CIT-3, Hyderabad. The Hon'ble CIT set aside the assessment order vide order u/s.263 dated 30.01.2014.

c. The assessing officer completed the set aside assessment vide order u/s.143(3) rws 263 of the IT Act dated 27.10.2014 estimating the income at 12% on bank deposits. Thus, he computed the total income at Rs. 4,15,670/-.

d. The said order was again subject matter of proceedings u/s.263 of the IT Act. The Hon'ble Principle CIT -7, Hyderabad set aside the assessment with a direction to bring to tax an amount of Rs.27,09,685/- as unexplained cash credit u/s.68 of the IT Act.

e. The assessing officer proceeded to finalize the set aside assessment proceedings. The assessing officer finalized the assessment proceedings u/s.144 rws 263 of the IT Act dated 01.06.2016 by including the amount of Rs.27,09,685/- by observing that there was no explanation from the assessee for the show cause notice issued.

In fact, the assessment order was received by a clerk in auditor's office who was attending the Income Tax matters. He left service without any prior notice or without handing over the papers. The new clerk who jointed in the month of September 2016 brought all pending papers to the notice of the auditor who advised the assessee to file appeal against the said order immediately. Thus, the delay occurred in filing of the present appeal against the order of the Hon'ble CIT-7 dated 25.01.2016.

Due to above detailed circumstances, the delay occurred in filing of the appeal before the Hon'ble ITAT, Hyderabad. Thus, the appeal was filed on 14-09-2016 with a delay of 234 days. The delay is quite unintentional and inadvertent due to circumstances beyond the appellant's control. It is therefore

prayed that the delay may please be condoned and the appeal be admitted.

What is stated above is true and correct to the best of my knowledge and belief.

Signed at Hyderabad on this_25th day of April, 2017.

*Sd/-
DEPONENT”*

2. The learned DR, however, opposed the condonation of delay and filed his objection in writing stating that the assessee was in receipt of the assessment order as well as subsequent notice u/s 143(2) of the Act, dated 22.2.2016 and show cause notice dated 6.5.2016 etc., and therefore, the reasons given by the assessee are not acceptable.

3. Having regard to the rival contentions and the facts mentioned in the condonation petition, we are satisfied that the delay is not willful or wanton as the assessee does not stand to gain by not filing the appeal in time. Therefore, the delay is condoned.

4. Brief facts of the case are that the assessee individual, engaged in the business of sale of washing powder, cigarettes, soaps etc., filed his return of income for the A.Y 2009-10 on 8.9.2009 admitting deemed income of Rs.1,60,400/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 29.11.2011 estimating the net profit @ 5.5% of the turnover of Rs.37,09,685/- and interest of Rs.3,931/- received from ING Vysya Bank Ltd.

5. Thereafter, the CIT perused the assessment records u/s 263 of the Act, and directed the Assessing Officer to enquire into the sources of the cash deposits into the assessee's Bank A/c

and to complete the assessment after causing full verification. In the consequent remand proceedings, the Assessing Officer asked the assessee to furnish the sources of the cash deposits. The assessee could not furnish the same and therefore, the Assessing Officer vide order u/s 143 r.w.s. 263 of the Act dated 27.10.2014 estimated the net profit at 12% of the cash deposits of Rs.34,31,180/- and brought it to tax.

6. The CIT again assumed jurisdiction u/s 263 of the Act and vide orders dated 27.2.2015 directed the Assessing Officer to bring to tax an amount of Rs.27,09,685/- as unexplained cash credit u/s 68 of the I.T. Act and thereafter, the Assessing Officer passed the consequential order dated 1.6.2016 bringing a sum of Rs.27,09,685/- to tax u/s 68 of the Act. Aggrieved, the assessee is in appeal against the second order of the CIT u/s 263 dated 31.5.2016 by raising the following grounds of appeal:

“1. The order of the Hon'ble Pr. CIT-7, Hyderabad u/s 263 of the IT Act is erroneous in law as well as facts of the case.

2. The Hon'ble CIT -7 ought to have observed that the order u/s.143(3) rws 263 of the IT Act dated 27.10.2014 was passed after taking into consideration the bank deposits appearing in the bank account and therefore the said order cannot be held as erroneous in law and prejudicial to the interest of revenue.

3. The Hon'ble CIT-7 ought to have noticed that the original scrutiny assessment order dated 29.11. 20 11 was subjected to 263 of the IT Act and therefore the consequential order u/s.143(3) rws 263 of the IT Act cannot be subject matter of revision u/s 263 in respect of same bank deposits.

4. The conclusion of the Hon'ble CIT that part of the bank deposits as unexplained investment, especially when the assessing officers treated them as business receipts in the assessment u/s.143(3) as well as 144 rws 263 of the IT Act, is improper and liable to be deleted.

5. Any other ground will be raised at the time of hearing”.

7. The learned Counsel for the assessee submitted that the first assessment order was passed u/s 143(3) of the Act and thereafter, consequent to the revision order u/s 263 of the Act dated 30.01.2014, the Assessing Officer called for the details from the assessee and since the assessee submitted that he was not maintaining any books of account and expressed his inability to explain the sources of the cash deposits, the Assessing Officer during the assessment proceedings under section 143(3) of the I.T. Act estimated the income at 12% of the total turnover/deposits of Rs.34,31,180/-. The learned Counsel for the assessee submitted that the Assessing Officer during the consequential assessment proceedings u/s 143(3) r.w.s. 263 of the I.T. Act, had made inquiries as directed by the CIT u/s 263 and has accordingly taken a view of treating the deposits as assessee's turnover and estimating the profit on the turnover at 12% since the assessee could not submit any details. Therefore, according to him, the Assessing Officer has accepted one of the possible views and thus the assessment order was not erroneous and prejudicial to the interest of the Revenue and therefore, such an assessment order cannot again be subject to revision u/s 263 of the Act. In support of this contention, the learned Counsel for the assessee placed reliance upon various case law. He has also drawn our attention to the bank statement for the period 1.4.2007 to 24.10.2010 (paper book pages 4 to 14) to demonstrate that all his business receipts were deposited into the Bank and therefore, all the deposits have to be considered the turnover of the assessee and profits can be estimated thereon as done by the Assessing Officer.

8. The learned DR, on the other hand, submitted that the Assessing Officer has not followed the directions of the CIT to verify the sources of the cash deposits and therefore, the assessment order was erroneous and prejudicial to the interests of the Revenue and therefore, entire cash deposits were directed to be brought to tax. Therefore, according to him, the order of the CIT u/s 263 dated 25.1.2016 should be confirmed.

9. Having regard to the rival contentions and the material on record, we find that undisputedly, the assessment of the assessee was completed u/s 143(3) of the Act and thereafter, it was revised u/s 263 of the Act. The CIT (A) had directed the Assessing Officer to verify the sources of the cash deposits and in the consequential proceedings, the Assessing Officer had required the assessee to explain the sources for the cash deposits. It was only on account of the assessee's inability to produce any evidence in support of the cash deposits that the Assessing Officer has proceeded to treat the total of the cash deposits also as the turnover of the assessee and estimate the income thereon at 12% as against 5.5% initially done by the Assessing Officer. It is, therefore, clear that the Assessing Officer has followed the directions of the CIT to verify the sources of the cash deposits and thereafter, on the inability of the assessee to explain the same, the Assessing Officer has adopted one of the possible views i.e., to treat the cash deposits as business receipts and to estimate the income at a percentage of the cash deposits or to make an addition of the entire deposits u/s 68 of the Act. The Assessing Officer has deemed it fit and proper to treat the cash deposits as the business receipts of the assessee and to estimate the income thereon at 12%. Therefore, it cannot be said that the assessment

order u/s 143(3) r.w.s. 263 dated 27.10.2014 is erroneous. By not bringing to tax the entire cash deposits u/s 68 of the Act, the assessment order may be said to have been prejudicial to the interest of the Revenue. But, for a valid revision, both the conditions i.e. the assessment order being erroneous and also being prejudicial to the interest of the Revenue are to be satisfied. Since the conditions are not satisfied, we deem it fit and proper to set aside the order u/s 263 of the Act, dated 25.01.2016. Accordingly, the order u/s 263 is set aside and the assessee's appeal is allowed.

10. In the result, assessee's appeal is allowed.

Order pronounced in the Open Court on 5th May, 2021.

Sd/- (A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 5th May, 2021.

Vinodan/sps

]Copy to:

S.No	Addresses
1	Sri Vuppala Raj Kumar C/o B. Narsing Rao & Co. C.A, Plot No.554, Road No.92, Jubilee Hills, Hyderabad 500096
2	Income Tax Officer Ward-1 Siddipet
3	CIT -7, Hyderabad
4	Pr. CIT -7, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order