CHIEF ACCOUNTS OFFICER vs. INCOME TAX OFFICER

IN THE ITAT BANGALORE BENCH 'C'

N.V. VASUDEVAN, VP & B.R. BASKARAN, AM.

ITA Nos. 98 & 99/Bang/2020

Jul 28, 2021

(2021) 62 CCH 0364 BangTrib

Legislation Referred to

Section 201(1), 194LA

Case pertains to

Asst. Year 2013-14

Cases Referred to

JCIT Vs. Tractors & Farm Equipments Ltd. 104 ITD 149
Chief Post Master General and Others Vs. Living Media India Pvt. Ltd. (2012) 348 ITR 7

Counsel appeared:

V.Chandrasekar, Advocate for the Assessee.: Pradeep Kumar for the Revenue

N. V. VASUDEVAN, VP.

1. These appeals by the assessee are directed against the separate ex-parte orders of CIT(A)-13, Bengaluru, dated 03.12.2019; for Assessment Year 2013-14 dismissing the assessee's appeals in limine by not condoning the delay in filing the appeal before him and thereby confirming the orders of ITO (TDS) Ward - 1(1), Bangalore, dated 17.03.2015 passed under section 201(1) and 201(1A) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee, Bruhat Bengaluru Mahanagara Palike (BBMP) is a local authority overseeing the development and provision of civic amenities of the city of Bengaluru. In consideration for acquisition of land for the purpose of providing civic amenities and infrastructure, the Assessee provided Development Right's Certificate(DRC). According to the revenue the Assessee ought to have deducted tax at source on the market value of the DRC u/s.194LA of the Act and since the Assessee failed to deduct tax at source, the AO passed two orders both dated 17.3.2015 holding the assessee as an

assessee in default u/s.201(1) of the Act and levied interest on the tax not deducted at source u/s.201(1A) of the Act.

3. Against the order of the AO, the assessee preferred appeal before CIT(A). There was a delay of 598 days in filing appeal before CIT(A) physically and further delay in filing the appeal online (1077 days). The delay in filing the appeal upto the date of the appeal being physically filed is relevant and the filing of appeal online as per legal requirements cannot be viewed as delay technically. The assessee explained the delay in filing the appeal as owing to the reason that the order appealed against was served on the assessee on 20.03.2015 during the general election to Lok Sabha and the officials of the BBMP were preoccupied with statutory duties relating to election. Due to the above reason, the order of the AO could not be communicated to the officials and had to file the appeal before CIT(A). The officials came to know about the non-filing of the appeal only when the online filing of the appeal was made mandatory. Thereafter, the certificate copies were collected and appeal was filed after obtaining the legal opinion from the tax consultant. It was contended that the delay in filing was not willful or malafide. The assessee relied on the decision of the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. MST Katiji 66 STC 228 (SC).

4. The CIT(A) refused to condone the delay in filing the appeal by holding that there was an inordinate delay in filing the appeal and that there was a difference of opinion between normal delay and inordinate delay. In this regard, the CIT(A) referred to the decision of the ITAT Bench in the case of JCIT Vs. Tractors & Farm Equipments Ltd. 104 ITD 149. The CIT(A) was also of the view that the assessee should prove it was diligent and no guilty of negligence and in this regard referred to the decision of the Hon'ble Supreme Court in the case of Ramla v. Rewa Coalfields (AIR 1962 SC 361) and the decision of the Hon'ble Supreme Court in the case of Chief Post Master General and Others Vs. Living Media India Pvt. Ltd. (2012) 348 ITR 7. The CIT(A) accordingly refused to condone the delay. Aggrieved by the order of the CIT(A), the assessee has preferred the present appeal. Apart from challenging the action of the CIT(A) in dismissing the appeal on the ground that the appeal was belatedly filed, the assessee has also challenged the orders of the AO on merits on the ground that similar issue has already been decided by the Hon'ble High Court of Karnataka in assessee's own case for Assessment Year 2010-11 and 2011-12 in favour of the assessee.

5. The learned Counsel for the assessee submitted that the action of the CIT(A) in refusing to condone delay was not correct as the reasons attributed for the delay are proper and sufficient cause. In this regard, learned Counsel submitted that when the issue is fully covered by the decision of the Karnataka High Court, the existence of delay in filing the appeal cannot be the basis to defeat the legitimate rights of the assessee. In this regard, reference was made by the learned Counsel for the assessee to the decision of this Tribunal in the case of M/s. Raghavendra Constructions Vs. ITO in ITA No.425/Bang/2012 dated 14.12.2012. On merits of the case, the learned Counsel relied on the decision of the Hon'ble Karnataka High Court in assessee's own case for Assessment Year 2010-11 and 2011-12. Learned DR relied on the order of the CIT(A).

5a. We have carefully considered the rival submissions. On the issue of condoning the delay, this Tribunal in the case of M/s. Raghavendra Constructions (supra) has dealt with the issue as follows:

> *"13. We have considered the rival submissions. At the outset, we observe that the Hon 'ble Supreme Court, in the case of Mst. Katiji (supra), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of Shakuntala Hegde, L/R of R.K. Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Hon'ble Tribunal condoned the delay of about*

1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011 has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal."

5b. Keeping in mind the aforesaid principles, we find that the reasons adduced by the assessee for not filing the appeal within the prescribed time has to be accepted has not willful and not owing to any negligence. We are also of the view that the ultimate purpose of tax proceedings is to determine the tax liability in accordance with law. Therefore, we are of the view that the delay in filing the appeal should have been condoned by the CIT(A). We accordingly condone the delay in filing the appeal before the CIT(A) and proceed to decide the appeals on merits.

6. As far as the merits of the appeals of the Assessee is concerned, it was brought to the notice of the Bench by the learned AR for the assessee that the identical issue for Assessment Years 2010-11 and 2011-12 in the assessee's own case was considered at length by a Co-ordinate Bench of this Tribunal and decided in favour of the assessee and against Revenue in its order in ITA Nos.719 and 720/Bang/2014 dated 14.11.2014. It was also submitted that the aforesaid order of the Tribunal (supra) was upheld by the Hon'ble High Court of Karnataka when it dismissed Revenue's appeal by order in ITA Nos.94 and 466 of 2015 dated 29.09.2015. The learned AR prayed that in view of the aforesaid binding decision of the Hon'ble Karnataka High Court in the assessee's own case (supra), the impugned orders of the CIT(A) be set aside and the assessee's appeals be allowed. The learned DR supported the orders of the authorities below; but prayed that the matter be set aside to the file of the CIT(A) for adjudication on merits.

7. We have considered the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited. We do not concur with the prayer of the learned DR that the matters in these appeals; i.e., the applicability of the provisions of section 194LA, the section 201(1)/201(1A) of the Act; in the case on hand be restored to the file of the CIT(A); as in our view, that would only prolong proceedings; more so when this issue is covered in favour of the assessee by the binding decision of the Hon'ble Karnataka High Court in the assessee's own case for Assessment Years 2010-11 and 2011-12 vide order in ITA Nos.94 and 466 of 2015 dated 29.09.2015, wherein it has upheld the Tribunal's order in ITA Nos.719 and 720/Bang/2014 dated 14.11.2014. In its decision (supra), the Hon'ble Karnataka High Court has considered the issue in detail, both on facts and in law and has held that the provisions of section 194LA of the Act would apply only in the case of a compulsory acquisition and not to a case where lands were surrendered by land owners under section 14B of KTCP Act. Hon'ble High Court also held that since BBMP is not paying consideration for acquisition of land in the form of cash, cheque, DD or any other mode prescribed under section 194LA but is only issuing CDR, the provisions of section 194LA of the Act are not attracted. The Hon'ble Court also held that when CDRs are issued, it is not possible to quantify the value in monetary terms and therefore TDS obligations cannot operate. For all the above reasons, the Hon'ble High Court held that the provisions of section 194LA of the Act are not attracted to a case of issue of DRCs by the BBMP for acquisition of land and therefore the assessee cannot be considered as an assessee in default under section 201(1) of the Act.

8. Respectfully following the decisions of the Hon'ble Karnataka High Court (supra) and the Co-ordinate Bench of this Tribunal in the assessee's own case for Assessment Years 2010-11 and 2011-12 (supra) on the identical issue, we hold that the provisions of section 194CA of the Act are not applicable / attracted in the facts and circumstances of the case on hand and therefore we hold that the impugned orders under section 201(1) and 201(1A) of the Act are bad in law and hereby quashed.

9. In the result, the assessee's appeals are allowed.

Order pronounced in the open court on this 28 th day of July, 2021.

*****

Customized Notes