

Chennai ITAT

Members

N. R. S. Ganesan

A. Mohan Alankamony

Lawyers (Assessee)

S. Sridhar

Lawyers (Revenue)

Asish Tripathy

Timeline

ITAT CHENNAI

14 Jul 2016

Case filed

06 Oct 2016

Listed for
hearing

09 May 2017

Hearing

26 Dec 2017

Case filed

27 Apr 2018

Hearing

17 Jul 2018

[Judgement](#)

R.P.P.INFRA PROJECTS LTD vs ACIT CIRCLE 1


 Clubbed Case 

17.07.2018 ITA 3161 / CHNY / 2017

Text Highlight Issues & Grounds of
appeal

Arguments

Holding &
Outcome

v.

v.

Both the Revenue and the assessee filed the appeals against the very same order of the Commissioner of Income Tax (Appeals)-3, Coimbatore, dated 29.04.2016 pertaining to assessment year 2012-13. Therefore, we heard both the appeals together and disposing of the same by this common order.

2. Let's first take the assessee's appeal in I.T.A.

3. There was a delay of 546 days in filing the appeal by the assessee before this Tribunal. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that there was a search in the premises of the assessee on 24.03.2016 and the assessment order was passed by the Assessing Officer for the year under consideration. According to the Ld. counsel, the Department initiated post search enquiries, therefore, the assessee was fully focused in the assessment proceeding initiated by the Department after the search. In the process, according to the Ld. counsel, the order received by the assessee was inadvertently misplaced. The assessee could not locate the same inspite of best efforts. After completion of post search enquiries, the assessee traced out the impugned order of the CIT(Appeals). In fact, according to the Ld. counsel, the assessee was advised by the Tax Consultant that in view of the proceeding initiated under Section 153A of the Income-tax Act, 1961 (in short 'the Act'), the regular assessment proceeding would stand terminated and there would not be any action taken on the assessment order passed in the regular course. According to the Ld. counsel, the assessee, thereafter consulted another Advocate and he advised the assessee that a separate appeal needs to be filed, therefore, there was a delay of 546 days. According to the Ld. counsel, the assessee was prevented from filing the appeal within the period of limitation.

Therefore, the delay may be condoned.

Law Referred

[Income Tax Act, 1961](#)

Section 153A, Section 35D, Section 35D(1)(ii), Section 35D(i), Section 37, Section 80-IA

on the part of the assessee for not filing the appeal within the period of limitation. According to the Ld. D.R., the search took place before the date of order of the CIT(Appeals), therefore, the assessee is not justified in filing the appeal belatedly.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The order of the CIT(Appeals) is dated 29.04.2016 and admittedly, the search took place on 24.03.2016. Therefore, naturally the assessee has to focus only on the search assessment by reconciling the material found during the course of search operation. Moreover, the assessee submits that there was legal advice that in view of the initiation of search proceeding, the pending assessment would stand terminated. This advice given by the consultant may be a wrong one. But, for the purpose of deciding the issue of condonation of delay, this Tribunal is of the considered opinion that the assessee was wrongly advised by a Tax Practitioner. Hence, the assessee has reasonable cause in not filing the appeal within the period of limitation. Therefore, the delay of 546 days is hereby condoned and the appeal of the assessee is admitted.

6. Now coming to the merit of the appeal, the only issue arises for consideration is the claim of deduction under Section 80-IA of the Act. According to the Ld. counsel, the assessee is a developer of housing projects, therefore, eligible for deduction under Section 80-IA of the Act. However, the lower authorities rejected the claim of the assessee on the ground that the assessee is a contractor. Therefore, deduction under Section 80-IA of the Act is not available. According to the Ld. counsel for the assessee, the assessee apart from developing eligible infrastructure facility, is also maintaining separate books of account for all such works. The assessee is taking a financial risk in developing the project. The contracts were entered into with State Government, more particularly with Irrigation Department. According to the Ld. counsel, the Assessing Officer as well as the CIT(Appeals) have not gone into the development work executed by the assessee and simply rejected the claim of the assessee on the ground that the assessee is a contractor.

7. The Ld.counsel for the assessee further submitted that there are various types of contracts as follows:-

- (i) Build Own Operate & Transfer (BOOT); (ii) Build Own Lease & Transfer (BOLT); (iii) Build Operate & Transfer (BOT)

Since, the assessee develops the infrastructure facility by taking financial risk, according to the Ld. counsel, the Revenue cannot say that the assessee is only a contractor and not a developer. Therefore, according to the Ld. counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

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