

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 07/Bang/2018	Shri Raju Ostwal (HUF), 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAFHR1558D	The Income Tax Officer, Ward – 2, Hospet	2012-13
ITA No. 08/Bang/2018	Shri Ramesh Kumar Ostwal, 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAEP09169J		
ITA No. 09/Bang/2018	Shri Avinash Ostwal (HUF), 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAHO5514R		
ITA No. 10/Bang/2018	Shri Ramesh Kumar Ostwal (HUF), 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAHO5513J		
ITA No. 11/Bang/2018	Smt. Meena Ostwal, 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004 PAN: AAEP09168K		
ITA No. 12/Bang/2018	Shri Raju Ostwal, 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAEP09170H		
ITA No. 19/Bang/2018	Smt. Rekha Ostwal, 67/15, 3 rd Floor, D flat, Pranav apartment, Opp Basavanagudi post office, K R Road, Basavanagudi – 560 004. PAN: AAEP09167G		

Appellant by	:	Shri Akshay Mehta, CA
Respondent by	:	Shri Balakrishnan .N, Addl. CIT (DR)

Date of hearing	:	02.03.2018
Date of Pronouncement	:	02.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

All these 7 appeals are filed by different but connected assesseees and these are directed against separate orders of Id. CIT(A)-5, Bangalore all dated

27.09.2017 for Assessment Year 2012-13. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. In all these cases, the appeal before CIT (A) was filed after a delay of 227 days. In all these cases, the assessee has moved an application before CIT (A) for condonation of delay and the reason given for the delay was this that the mother of the assessee was suffering from severe health issues with a clot in the brain and partial paralysis and subsequently, she passed away on 01.12.2015 and the assessee was required to attend his mother during her illness and for this reason, the assessee was unable to attend work and hence, the appeal could not be filed in time. In all these cases, the Id. CIT (A) did not condone the delay in filing the appeal and dismissed all these appeals without any decision on merit. In all these cases, apart from various grounds on merit, this is one of the grounds raised before the Tribunal that the CIT (A) should have condoned the delay caused due to the death of the assessee's bed-ridden mother and shifting of their permanent place of residence from his village to Bangalore city. All these appeals were heard on this limited issue of condonation of delay by CIT (A).
3. The Id. AR of assessee submitted an affidavit of various assessee's i.e. Shri Raju Ostwal, Shri Ramesh Kumar Ostwal, Shri Avinash Ostwal, Smt. Rekha Ostwal w/o. Shri Raju Ostwal and Smt. Meena Ostwal w/o. Shri Ramesh Kumar Ostwal in which the reasons for delay in filing the appeal before the CIT(A) are narrated along with the death certificate of Smt. Shanthi Bai Ostwal dated 17.10.2016 as per which she expired on 01.12.2015. In course of hearing, it was submitted by Id. AR of assessee that the appeals were required to be filed before CIT (A) on or before 07.05.2015 but these were filed on 21.12.2015 with a delay of 227 days and the delay is caused by the illness of the mother of the assessee Smt. Shanthi Bai Ostwal who expired on 01.12.2015 and therefore, within 20 days, the appeals were filed on 21.12.2015. He submitted that under these facts, the CIT (A) should have

condoned the delay in filing the appeals. The Id. DR of revenue supported the order of CIT(A).

4. I have considered the rival submissions. I find that the decision of CIT (A) regarding rejection of the request for condonation of delay is contained in para no. 3 of the order of CIT (A). This is almost identical in all the cases. Therefore, I reproduce Para 3 from the order of CIT(A) in the case of Shri Raju Osthwal in ITA No. 7/Bang/2018 and the same is as under.

“3. Now going by the facts of this case, the appellant has stated that all his accounts are taken care by his brother Sri Ramesh Kumar Osthwal whose mother was suffering from severe health issues with a clot in the brain and partial paralyses and subsequently she passed away on 01/12/2015 and as he had to attend to his mother during her illness he was unable to attend work. Also for his mother better treatment and improved attendance he had shifted to Bengaluru along with his family during this period which was also a reason that he could not attend the work and which caused a delay in filing of appeal and amidst all these, the matter of filing of appeal against the order passed has completely escaped his attention. It is the fact that the appellant did not file the appeals before the first appellant authority within the due date and it was filed after the delay of 227 days for the year under consideration. The reasons stated in his submissions that his brother could not attend the work due to his mother's illness cannot be accepted. Further the reasons given by the appellant are not falling in any of categories as illustrated in the case laws mentioned in the above paras. Therefore, I am of the considered opinion that the reasons given are not attributable to any bonafidies and therefore, the appellant is not deserved for any condonation of delay u/s 249(3) of the IT Act.”

5. From the above Para reproduced from the order of CIT(A), it is seen that all these facts were very much before CIT(A) that during the period when the appeal was required to be filed by assessee, the mother of the assessee was severely ill with a clot in the brain and partial paralysis and she ultimately expired on 01.12.2015 and thereafter, the appeals were filed within 20 days i.e. on 21.12.2015 as noted by CIT(A) also on page no. 1 of his order in all these cases. Considering these facts, I feel that the delay of 227 days in filing the appeal before CIT(A) in all these cases should have been condoned by CIT(A) and he should have decided the issue on merit in all these cases but since he has not done so, I set aside the order of CIT(A) and restore these matters back

to his file in its entirety with the direction that he should decide all these appeals on merit by condoning the delay in filing these appeals because I feel that in the facts of the present case, the reasons for delay are acceptable as reasonable cause and hence, I condone the delay in all these cases and direct the CIT(A) to decide all these appeals on merit.

6. In view of this decision, no adjudication is called for at this stage regarding merit of the issue. Hence I do not make any comment on the merit of the case.
7. In the result, all the 7 appeals filed by the assessee are allowed for statistical purposes in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 2nd March, 2018.
/MS/

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.