

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 165/VIZ/2018  
(Asst. Year : 2011-12)**

M/s. Narayana Reddy Enterprises, vs. ITO, Ward-1,  
D.No. 34-16-38, Cinema Road, Kakinada.  
Mandapeta, Kakinada,  
East Godavari District.

PAN No. AABFN 8259 K  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Mrs. Suman Malik – Sr.DR

Date of hearing : 29/11/2018.  
Date of pronouncement : 07/12/2018.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Guntur, dated 25/10/2016 for the Assessment Year 2011-12.

**2.** There is a delay of 392 days in filing of this appeal. The assessee has filed a petition, which is reproduced as under:-

*"The appellant received the order dt.25.10.2016 of the learned Commissioner of Income Tax (Appeals) on 10.02.2017. The appeal therefore ought to have been filed before the Hon'ble ITAT on or before 11.04.2017. However, the appeal against the above order could be filed before the*

*Hon'ble Tribunal only on 08.05.2018 and as such there was a delay of 392 days. The facts leading to the said delay are stated hereunder for the kind perusal of the hon'ble ITAT, Visakhapatnam:*

- 1. The managing partner of the appellant firm Sri K. Narayana Reddy handed over the order of the learned Commissioner of Income Tax (Appeals) to his accountant during the first week of March and required him to meet the auditor and ensure that the appeal was filed before the hon'ble ITAT. The accountant Sri P. Srinivasa Rao met the auditor during which he was asked to furnish all the relevant documents necessary for filing the appeal.*
- 2. During the last week of March, 2017 the accountant fell down and had a fracture in the first vertebra of the vertebral column. The accountant was above 50 years and keeping in view of his age he was advised to have absolute bed rest for 12 weeks and more if necessary (Medical certificate enclosed). During the period, 01.04.2017 to 30.06.2017, the accountant Sri P. Srinivasa Rao was absent from his duties. The managing partner could not find a suitable substitute for him. He himself with great difficulty tried to manage the accounts. In such condition, the matter of filing the appeal before the hon'ble ITAT escaped his attention.*
- 3. Subsequently, the penalty order dt.23.03.2018 u/s 271(1)(c) of the Act was also passed and was received by the appellant on 31.03.2018. The managing partner consulted his auditor for filing the appeal against the penalty order. During the discussion, the managing partner was asked about the status of appeal filed against the original assessment order. The managing partner verified and came to know that the appeal against the Commissioner of Income Tax (Appeals) order was not filed before the hon'ble ITAT till date. The managing partner immediately took steps to ensure that the appeals were filed without further loss of time.*
- 4. As such, the appeal against the penalty order could be filed within time on 24.04.2018 and the appeal against the order dt. 25.10.2016 of the learned Commissioner of Income Tax (Appeals) was filed on 08.05.2018 with a delay of 392 days.*
- 5. Thus, the above delay of 392 days was due to circumstances explained above that were beyond the control of the appellant. The delay was neither intentional nor deliberate. Therefore, it is respectfully*

*prayed that the delay may kindly be condoned and appropriate orders may kindly be passed in the interests of substantial justice. Inconvenience caused in the matter is regretted."*

The assessee also filed an affidavit along with medical certificate. Ld. counsel for the assessee has submitted that this appeal is filed by the assessee against the *exparte* order passed by the Id. CIT(A) and submitted that the assessee could not appear before the Id. CIT(A), who is sitting at Guntur and prayed that delay may be condoned. It is further submitted that if this Tribunal is not condoned the delay, there is no occasion for the assessee to substantiate his case on merits, thereby assessee is put to irreparable loss and injustice and requested that delay may be condoned.

**3.** On the other hand, Id. Departmental Representative seriously opposed and submitted that delay is extraordinary; therefore, petition for condonation of delay may be dismissed.

**4.** We have heard both the parties, perused the affidavit and medical certificate issued by the Doctor. We find that the assessee has failed to explain the delay fully for the entire period of delay, though, medical certificate is filed. In this case, Id.CIT(A) passed the *exparte* order, if we incline to condone the delay, the assessee neither got opportunity before the Id. CIT(A)

nor before the ITAT to decide the appeal on merits. Thus, we following the principles of natural justice, are of the opinion that assessee's case has to be heard on merits either before the Id.CIT(A) or before the Tribunal. Considering the peculiar facts and circumstances of the case, we are of the opinion that delay has to be condoned. Accordingly, delay is condoned.

**5.** So far as merits of the case is concerned, Id. CIT(A) not adjudicated the matter on merits, only dismissed for non-appearance, therefore, we set aside the order passed by the Id.CIT(A) and remit the matter back to the file of Id. CIT(A) with a direction to adjudicate the issue afresh in accordance with law. We also direct the assessee to appear before the Id. CIT(A) on the date given for hearing, without fail.

**6.** In the result, appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in open Court on this 07<sup>th</sup> day of Dec., 2018.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 07<sup>th</sup> Dec., 2018.**

**vr/-**

*Copy to:*

1. *The Assessee – M/s. Narayana Reddy Enterprises, D.No. 34-16-38, Cinema Road, Mandapeta, Kakinada, East Godavari District.*
2. *The Revenue – ITO, Ward-1, Kakinada.*
3. *The Pr.CIT-2, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.