

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.333/Bang/2018
(Assessment year: 2012-13)

Shri K.Shashikala,
W/o Shri Srinath Reddy,
No.1814, 1st Main, 9th Cross,
Vidyanagar,
Davangere. ... Appellant
PAN:BCJPS 8040 J

Vs.

Income-tax Officer,
Ward 1(2),
Davangere. ... Respondent

Appellant by : Shri V.Srinivasan, Advocate.
Respondent by : Dr. Pradeep Kumar, Addl.CIT(DR)

Date of hearing: 26/03/2019
Date of pronouncement: 03/04/2019

O R D E R

Per PAVAN KUMAR GADALE, JM :

The assessee has filed the appeal against the order of the CIT, Davangere, dated 22/08/2017 passed u/s 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2012-13.

2. Brief facts of the case are that there was a survey u/s 133A of the Act conducted in the premises of the assessee's

husband Shri K. Srinath Reddy on 05/08/2013. It was found that the assessee in spite of having taxable income, has not filed Return of income and therefore, notice u/s 148 of the Act was issued. In compliance to the notice, the assessee filed Return of income electronically on 08/01/2014 with total income of Rs.3,66,870/-. Since there was no response to notices u/s 142(1) and 143(2) of the Act, the AO issued show cause notice on 04/06/2014. The Assessing Officer (AO) noticed from the financial statement and the information filed by the assessee, that the assessee has real estate income and made addition of Rs.4,83,134/- and other additions including short-term capital gains and assessed the total income of Rs.15,40,860/- and passed the order u/s 144 of the Act dated 25/3/2015.

3. Aggrieved by the order, the assessee filed an appeal with the CIT(A). In the appellate proceedings, the assessee was provided with an opportunity of hearing but none appeared on behalf of the assessee or any communication was there. Therefore, the CIT(A) having considered the information on record and service of notice of hearing, has dismissed the appeal of the assessee for want of prosecution by order dated 22/08/2017. Aggrieved by the order, the assessee filed an appeal before the Tribunal.

4. At the time of hearing, the learned AR submitted that there is a delay of 15 days in filing the appeal before the Tribunal and accordingly filed an affidavit explaining the reasons for not filing the appeal within stipulated time. We have perused the condonation petition and having satisfied with the reasons for delay and the learned DR has no serious objection, therefore, we admit the appeal.

Further, the learned AR submitted that the assessee could not prosecute the appeal before the CIT(A) due to various reasons and emphasized that an opportunity be provided to the assessee to substantiate before the lower authorities. The learned DR opposed the submissions.

5. We heard the rival submissions and perused the material on record. The learned AR prayed for an opportunity and when a query was raised to the learned AR to explain the Reasonable cause for non-appearance, the explanations of learned AR are not satisfactory and are not supported with any evidence. We, considering the principles of natural justice and to meet the ends of justice, restore the entire disputed issue to the file of the CIT(A) but considering the facts on record with respect to non-appearance of the assessee or learned AR in spite of issuing notices in appellate proceedings and the assessee chose not to appear which cannot be overlooked. Therefore, we are

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of the substantive opinion that the assessee should be provided an opportunity of hearing but with payment of cost of Rs.5,000/- to the Income-tax Department before 10th April, 2019. Subject to the payment of above cost, we restore the entire disputed issue to the file of the CIT(A) to consider the matter afresh and adjudicate on merits. Further, the assessee shall submit proof of payment of cost through challan copy with Tribunal and appellate authority. It is nevertheless to mention that the CIT(A) should provide reasonable opportunity to the assessee to file evidences and documents in support of case and assessee shall also co-operate in submitting the information as expeditiously for early disposal of the appeal and we order accordingly.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 3rd April, 2019.

sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 03/04/2019
srinivasulu, sps

sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

1-Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore