

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA. No.2067/Bang/2018
(Assessment Year: 2009-10)

Shri H V Chikkagariga Reddy, PWD Contractor, Haristala, Chikkapayalagurki Post, Chikkaballapur Taluk-562 101 PAN ABPPC 8186R	Vs.	Income Tax Officer, Ward 2, Kolar.
(Appellant)		(Respondent)

Assessee By:	Smt. Pratibha, Advocate.
Revenue By:	Shri R N Siddappaji, Addl. CIT

Date of Hearing :	10.07.2019
Date of Pronouncement :	10.07.2019

ORDER

PER SHRI B R BASKARAN, A.M. :

This appeal filed by the assessee is directed against the order Dt.31.5.2018 passed by Commissioner of Income Tax (Appeals)-7, Bangalore and it relates to the Asst. Year 2009-10.

2. The assessee is aggrieved by the learned CIT (Appeals) in dismissing the appeal, *in limine*.

3. We hear the parties and perused the material on record. The assessment of the assessee was completed on 28.12.2011 by making an addition of Rs.9.95 lakhs. The Assessing Officer thereafter initiated penalty proceedings and levied a penalty of Rs.2.98 lakhs under Section 271(1)(c) of Income Tax Act, 1961 (hereinafter called ~~the Act~~). The assessee challenged the penalty order by filing an appeal before the CIT (Appeals). In Form No.35, the date of receipt of penalty order was mentioned as 3.7.2012 and the appeal was filed before the CIT (Appeals) on 9.8.2012 resulting in delay of 7 (seven) days. Since the assessee did not file any condonation petition, the CIT (Appeals) sought explanation from the assessee. The assessee replied that he received penalty order only on 21.7.2012 and the date of receipt was wrongly mentioned in Form No.35. Accordingly, it was submitted that the appeal was filed within the time. Not convinced with the explanation of the assessee, the learned CIT (Appeals) dismissed the assessee's appeal *in limine*.

4. We notice that the assessee has furnished a letter before the CIT (Appeals) stating that the order was received only on 21.7.2012 and hence there was no delay in filing the appeal before him. It was also mentioned that the date of receipt of order was wrongly mentioned in Form No.35. Even if the date

mentioned in Form No.35 is taken into consideration, there is a delay of seven days only. The assessee has explained that he is residing in a remote village and hence there was a delay in receiving the communication. Considering these facts, we are of the view that the delay in filing the appeal before the CIT (Appeals) deserves to be condoned. Accordingly, we condone the delay, if any, before the CIT (Appeals). Since the CIT (Appeals) has not adjudicated on merits, we set aside the order passed by the CIT (Appeals) and restore the matter to him for adjudicating afresh on the grounds raised by the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 10th July, 2019.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(B.R.BASKARAN)
ACCOUNTANT MEMBER

Dated: 10.07. 2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore

1.	Draft dictated on	11.07.2019
2.	Draft placed before author	11.07.2019
3	Draft proposed & placed before the second Member	
4	Draft discussed/approved by second Member	
5	Approved Draft comes to the Sr.P.S./PS	
6.	Kept for pronouncement on	
7.	File sent to the Bench Clerk	
8	Date on which file goes to the Head Clerk	
9	Date of Dispatch of order	