

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND**

**SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.256(Bang)/2018  
(Assessment Year : 2009-10)**

Panchamal Ganesh Shenoy (HUF)  
No.2-1-2-22, Hill Grove,  
Chilimbi Hills,  
Mangaluru-575 006  
PAN No.AAHHP4230L

Appellant

**Vs**

The Income tax Officer,  
Ward-1(2),  
Mangaluru,

Respondent

**Appellant by : Shri V. Srinivasan, Advocate  
Revenue by : Sri R.N.Siddapaji, Addl.CIT**

**Date of hearing : 01-07--2019**

**Date of pronouncement :**

**ORDER**

**PER SMT BEENA PILLAI, JUDICIAL MEMBER**

1. The orders of the authorities below purported to give effect to the order of the Hon'ble High Court to pass appropriate order according to law is opposed to the direction of the Hon'ble High Court, law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in not appreciating that there was an error in filling up the figures in the office of the appellant's Authorised Representative, who owned up the mistake and rectified the same by filing the rectified return, which clearly substantiated that a mistake committed at their end, which fact is not disputed by the learned A.O. or for that matter by the learned CIT[A] and therefore, there is no justification for refusing to rectify the mistake and harping upon the validity of the rectified return under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] ought to have followed the Board's Circular No. No.14[XL-35] of 1955, dated 11/04/1955 and directed the A.O. to rectify the order instead of capitalizing on the mistake committed in the office of the appellant's representative, which mistake has been substantiated by the appellant's representative by filing the so-called revised, which is merely a rectified return and also accepted by him in the course of submissions made before the learned A.O. both prior to and afterwards during the

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before him and before the CIT, u/s.264 of the Act, which orders have been set aside by the Hon'ble High Court directing the A.O. to pass appropriate order.

4. The learned CIT[A] having accepted that there was an error in reporting the income in the said return is not justified in upholding the refusal to rectify such a mistake under the facts and in the circumstances of the appellant's case.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

1. *The Learned CIT (Appeals) erred in upholding the Order of the Assessing Officer in the manner in which he did.*
2. *The Learned CIT (Appeals) erred in upholding the levy of penalty u/s 271(1) (c) amounting to Rs.7,10,000/-.*
3. *The Learned CIT (Appeals) ought to have appreciated the fact that the notice dated 23/3/2015 issued u/s 274 r.w.s 271 of The Income tax Act was bad in law.*
4. *The Learned CIT (Appeals) erred in dismissing the appeal of the appellant by stating that the Appeal filed by the Appellant was belated by more than 20 days without providing an opportunity to state that the Appeal represented before the CIT (Appeals) was within time.*
5. *The Learned CIT (Appeals) ought to have provided sufficient opportunity to the Appellant to explain the sufficient cause for delay of more than 20 days by providing the Appellant to file a letter for condonation for delay, in case the Appeal was belated.*
6. *The Learned CIT (Appeals) ought to have issued a defect notice with regard to delay of more than 20 days, in case the Appeal filed by the Appellant was belated.*
7. *The Learned CIT (Appeals) ought to have called for the assessment records for the assessment year in dispute in case there was any doubt with regard to the receipt of the date of assessment order which he failed to do so.*
8. *The Learned CIT (Appeals) erred in relying on the following judgement;*
  - a) *Chief Postmaster General and Others Vs Living Media India ltd. 5 ITA No.3555/De1/2009 Asst. Year 200203(2012) 348 ITR 7 (SC).*

b) *Pundlik Jalam Patil(dead) by LRS vs Executive Engineer, Jalgon Medium Project (2008) 17SCC 448.*

c) *Vedabai alias Vijayantabai Naburoa Patil Vs Shantaram Baburoa Patil 125 STC 375 SC.*

d) *Collector, Land Acquisition Vs Mst. Katiji 1987 SC 1353.*

e) *Case of SRF Ltd. New Delhi Vs Assess on 14 November, 2014, the ITAT Delhi.*

9. *For these and other such grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed”.*

### **ITA No.6/BNG/2018 (Assessment year 2010-11)**

1. *The Learned CIT (Appeals) erred in upholding the Order of the Assessing Officer in the manner in which he did.*

2. *The learned CIT (Appeals) erred in upholding the addition of Rs.25,98,234/- being cash deposited to bank as business income.*

3. *The Learned CIT (Appeals) erred in dismissing the appeal of the appellant by stating that the Appeal filed by the appellant was belated by 146 days without providing an opportunity to state that the Appeal represented before the CIT (Appeals) was within time.*

4. *The Learned CIT (Appeals) ought to have provided sufficient opportunity to the Appellant to explain the delay of 146 days by providing the Appellant to file a letter for condonation for delay, in case the Appeal was belated.*

5. *The Learned CIT (Appeals) ought to have issued a defect notice with regard to delay of 146 days in case the Appeal filed by the Appellant was belated.*

6. *The Learned CIT (Appeals) ought to have called for the assessment records for the assessment year in dispute in*

*case there was any doubt with regard to the receipt of the date of assessment order which he failed to do so.*

*7. The Learned CIT (Appeals) erred in relying on the following judgment*

*a) Chief Postmaster General and Others Vs Living Media India ltd. 5 ITA No.3555/De1/2009 Asst. Year 2002-03(2012) 348 ITR 7 (SC).*

*b)Pundlik Jalam Patil (dead) by LRS vs Executive Engineer, Jalgoan Medium Project (2008) 17SCC 448.*

*c)Vedabai alias Vijayantabai Naburoa Patil vs Shantaram Baburoa Patil 125 STC 375 SC.*

*d) Collector, Land Acquisition Vs Mst. Katiji 1987 SC 1353.*

*e) Case of SRF Ltd. New Delhi Vs Assess on 14 November, 2014, the ITAT Delhi.*

*8. For these and other such grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed”.*

**Brief facts of the case are as under:**

Assessee had not filed return of income for year under consideration within the time prescribed under the statute. Ld.AO accordingly issued notice under section 148 of the act as assessee had large No. of transaction including cash deposits to the tune of Rs.16,92,000/-maintained in an account with ICICI bank, Bangalore. Several notices were issued to assessee however assessee failed to comply with the same. Ld.AO octane bank

accounts statements held by assessee at HDFC bank Bangalore and ICICI bank for the relevant period and found cash credits as well as cheque payments. Assessee was asked to explain the source of income for the deposits including cash which was again not complied. Ld.AO therefore completed the assessment ex parte by making total addition in the hands of assessee at Rs.25,98,234/- as unexplained cash credits. He also initiated penalty under section 271 (1) ( c) of the Act.

2. Ld.AO has recorded that even for penalty notices issued assessee failed to file any explanation and accordingly hundred percent penalty was levied on the tax sought to be evaded due to concealment of particulars of income.

3. Against quantum addition, as well as penalty levied by Ld.AO, assessee preferred appeal before Ld.CIT (A).

3.1 Ld. CIT (A) in quantum and penalty appeal filed by assessee observed that assessee nither filed appeal within prescribed time, nor has provided sufficient cause for the delay. Ld. CIT (A) thus did not condone the delay and dismiss the appeal filed by assessee *in limine*.

4. Aggrieved by order passed by Ld.CIT (A) in quantum as well as penalty appeal, assessee is in appeal before us now. At the threshold, Ld.AR submitted that assessee received quantum as well as penalty order passed by Ld.AO on 24/08/15 and accordingly appeal filed by assessee on 18/09/15 is a well within time. He submitted that the presumption of Ld.CIT (A) that assessee would have received the orders passed by Ld.AO within 2 to 3 days time is

without any basis. Assessee did not have any proof to establish that it had received the orders passed by Ld.AO on 24/08/15 and therefore Ld.CIT (A) presumed that the appeal filed by Ld.AO before the 1<sup>st</sup> appellate authority is with a delay of 146 days.

He submitted that Ld.CIT(A) has not relied upon any documents/evidences to substantiate, that assessee received orders passed by Ld.AO within 2 to 3 days time.

5. He submitted that in the interest of natural Justice the appeal may be set aside to Ld. AO with a direction to decide the issue on merits.

6. Ld.Sr.DR supported order passed by authorities below and submitted that assessee has filed appeal with a delay of 146 days and has failed to substantiate such delay in filing of appeal.

7. We have perused submissions advanced by both sides in the light of the records placed before us.

7.1 The contentions raised by assessee before us regarding receipt of orders passed by Ld.AO on 24/08/15 is not supported by any evidence. However, there is nothing on record brought by Ld. DR to establish that submissions advanced by assessee is not true. Under such circumstances, the benefit of doubt shifts to assessee. The right of assessee of seeking the decision on merits of the case cannot be denied and therefore, we are of considered opinion, that Ld.CIT (A) should decide the issue on merits. We are therefore inclined to restore the appeal back to the file of Ld.CIT (A) with a direction to decide the issue on merits. For doing so we condoned the delay if any in filing of appeal by assessee before Ld.CIT (A).

Assessee is directed to file all requisite details before Ld.CIT (A) in order to establish its claim and Ld.CIT (A) shall verify the evidences filed and decide the issue on merits according to law. Needless to say that assessee shall be granted proper opportunity of being represented.

**Accordingly grounds raised by assessee in quantum as well as penalty stands allowed for statistical purposes.**

**8. In the result appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on

**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**

Dated:  
**\*am**

**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order  
Asst. Registrar