

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

S.P. No. 233/Bang/2019 (in ITA No. 1701/Bang/2019) & ITA No. 1701/Bang/2019
Assessment Year : 2016-17

Shri Gopalagowda Ravi, # 471, BCMC Layout, Raghuvanahalli, Doddakallasandra Post, Bangalore – 560 062. PAN: AHGPR8215D	Vs.	The Assistant Commissioner of Income Tax, Circle – 3 (2) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Ramakrishna Kamat, CA
Revenue by	:	Shri R.N. Siddappaji, Addl. CIT (DR)
Date of hearing	:	16.08.2019
Date of Pronouncement	:	16.08.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

In course of hearing of this stay petition, it was submitted by the learned AR of the assessee that the appeal was dismissed by Id. CIT(A) on this basis that the notice of demand was served on the assessee on 10.12.2018 although the assessee has reported in the Form No. 35 that the date of service of demand notice is 11.12.2018. The appeal was filed before Id. CIT(A) on 10.01.2019. But it is noted by Id. CIT(A) in para 4 of his order that appeal should have been filed by 09.01.2019 and therefore, there is delay of one day in filing the appeal before Id. CIT(A) and in the same para, it is also noted by Id. CIT(A) that assessee has not given any reason for delay in filing the appeal and there is no request for condonation of delay in filing the appeal and therefore, Id. CIT(A) held that delay is not condoned and he dismissed the appeal.

2. At this juncture, it was observed by the bench that under these facts, the appeal itself can be decided and as a consequence, the stay petition filed by the assessee should be dismissed and the same is dismissed.
3. Regarding the appeal of the assessee, we find that there is dispute regarding the date of service of the assessment order along with the demand notice to the assessee which is 11.12.2018 as per the assessee as stated by the assessee in Form No. 35 but as per Id. CIT(A), the order of assessment along with the demand notice was served on the assessee on 10.12.2018 and therefore, there is delay of

one day in filing the appeal and assessee has not made any application for condonation of delay. Under these facts, we feel it proper to restore the matter back to the file of Id. CIT(A) for fresh decision. We direct the assessee that without waiting for the notice of hearing from CIT (A), he should make proper representation before Id. CIT(A) regarding correct date of service of assessment order along with the original demand notice to the assessee and if it is felt that there is delay of one day in filing the appeal before Id. CIT(A) and if assessee wants to file application for condonation of delay, the assessee should file the same along with the representation about correct date of service of demand notice. Thereafter, the Id. CIT(A) should decide regarding the existence of delay in filing of appeal and if it is found that there is delay then he should decide the request for condonation of delay if such request is made. In case, it is found that there is no delay or in case the delay is condoned, the Id. CIT(A) should decide the issue on merit after providing adequate opportunity of being heard to both sides.

4. In the result, the stay petition filed by the assessee is dismissed and the appeal filed by the assessee is allowed for statistical purposes.

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

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 16th August, 2019.

/MS/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.