

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

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

ITA No.392/Bang/2019

Assessment year : 2011-12

Sri P.V Chikka Muniswamappa (HUF), Behind Maramma Temple, B.B Road, Amruthahalli, Bengaluru-560 092.  PAN – AXRPN 8619 E.	Vs.	The Income-tax Officer, Ward-6(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellate by	:	Shri V Srinivasan, Advocate
Respondnet by	:	Shri R.N Siddappapji, Addl. CIT (DR)

Date of hearing	:	08.07.2019
Date of Pronouncement	:	12.09.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The appeal filed by the assessee is directed against the order dated 7-12-2018 passed by Ld CIT(A)-VI, Bangalore and it relates to the asst. year 2011-12.

2. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee in limine refusing to condone the delay in filing the appeal before him.

3. We heard the parties and perused the record. The assessee HUF along with the other family members have entered into a joint

development agreement for development of certain property with M/s SVS Infrastructure on 15/9/2010. Since the assessee did not file return of income, the AO reopened the assessment of the year under consideration by issuing notice u/s 148 of the Act. In response thereto, the assessee filed a return of income declaring a total income of Rs.192.36 lakhs. However, the AO completed the assessment by determining the total income of the assessee at Rs.272.65 lakhs. The assessee did not initially prefer appeal before the Id CIT(A). Subsequently, it filed a appeal before Id CIT(A) with a delay of 375 days. The Id CIT(A) refused to condone the delay and accordingly dismissed the appeal in limine.

4. Aggrieved, the assessee has filed this appeal before us.

5. We heard the parties and perused the record. We noticed that the reasons cited by the assessee for the delay in filing the appeal before the Id CIT(A) has been discussed by the first appellate authority as under:-

*“Along with the appeal, the appellant has filed a petition for condonation of delay in filing the appeal. In the petition, the appellant,-has stated that the assessment order was received by it on 31/03/2015 and accordingly, the appeal should have been filed on or before 30/04/2015. However, the appeal was filed on 09/05/2016 and thus there was a delay of 375 days in filing the appeal. The appellant has stated that soon after receipt of the assessment order, they were advised by their Authorised Representative, Shri Mahesh Baligeri against filing the appeal in view of the binding decision of the jurisdictional High Court in CIT vs. T.K.Dayalu and also because the assessment*

*was an agreed assessment. Thereafter in 2016 they were advised by another Chartered Accountant, Shri Vijay Bhatia that the quantification of capital gains had been wrongly done by the AO based on the estimated cost of construction and that the Bangalore ITAT had, in the case of MIs Sharikar Vitthal Motor Co. Ltd. In ITA No. 35/1 3/IT dated 18/03/2016, held that the capital gains has to be computed on the basis of the guidance value of the lands transferred. Therefore the appellant approached the present AR who advised them that an appeal could be filed with an application for condonation of delay and hence they filed the appeal late.”*

5. We noticed that the Id CIT(A) had also dismissed the appeal of one of the co-owners of the property named P.V Krishnappa (HUF) in limine, wherein also identical reasons were given for the delay in filing appeal before him. The above cited P.V Krishnappa (HUF) had preferred an appeal before the Tribunal and the coordinate bench of the Tribunal, vide its order dated 28.8.2009 passed in ITA No.380/Bang/2009, has condoned the delay and restored the appeal to the file of the Id CIT(A) for adjudicating the grounds on merit.

6. We are of the view that the decision taken by the coordinate bench in the above said case can be conveniently followed in this case, as the facts surrounding the case as well as reasons given by both the assesseees for the delay in filing appeal are identical. For the sake of convenience we extract below operative portion of the order passed by the coordinate bench in the case of P.V Krishnappa (HUF) referred (Supra).

*“4.4 We have heard and considered the rival contentions and the material on record in respect of the matter of non-condonation of delay of 375 days in filing the appeal before the CIT(A)-6, Bangalore. It is apparent that the CIT(A) has not adjudicated the assessee's appeal on merits, but dismissed it, in limine, by not condoning the delay in filing the appeal. The ultimate object of assessment proceedings is that the true and correct income of the assessee be brought to tax. It is unlikely that the assessee would have deliberately or intentionally filed the appeal before the CIT(A), belatedly, especially when it is saddled with tax demand of Rs. 1,08,29,512/-. Taking into account the principles laid down by the Hon'ble Apex Court in the case of MST Katiji and Others (supra), wherein the Hon'ble Apex Court laid down the principles for dealing with matters relating to condonation of delay; the decision of the Hon'ble Karnataka High Court in the case of ISRO Satellite Centre (supra); the decision of the Co-ordinate Bench in the case of Shakuntala Hegde L/R R. K. Hegde (supra) and the reasons adduced by the assessee in its Petition seeking condonation of delay (supra), we are of the view that the assessee was prevented by reasonable and sufficient cause from filing the appeal for Assessment Year 2011-12 on time before the CIT(A)-6, Bangalore. In this view of the matter and respectfully following the principles laid down by the Hon'ble Apex Court in the case of MST Katiji and Others (supra), we condone the delay of 375 days by the assessee in filing the appeal before the CIT(A). Since it is evident that the assessee's appeal has been dismissed by the CIT(A) only on technical grounds; by non-condonation of delay in filing the appeal; and not adjudicated the merits of the issues raised in the appeal before her, the impugned order of CIT(A)-6, Bangalore dated 07.12.2018 for Assessment Year 2011-12 is set aside and the matter is restored to the file of the CIT(A) for adjudication on merits. Needless to add, the CIT(A) shall afford the assessee adequate opportunity of being heard and to file submissions / details required;*

*which shall be duly considered before deciding the appeal. It is accordingly ordered. Consequently, the other grounds raised on merits in this appeal (supra) are not required to be adjudicated at this stage.”*

7. Consistent with the view taken in the above said case, we condone the delay in filing the appeal before Id CIT(A). Since the Id CIT(A) has not adjudicated the issues on merits, we set aside the order passed by the Id CIT(A) and restore all issues to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

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

Order pronounced in the Open Court on **12<sup>th</sup> September, 2019.**

**Sd/-  
(Beena Pillai)  
Judicial Member**

**Sd/-  
(B.R Baskaran)  
Accountant Member**

Bangalore,  
Dated, 12<sup>th</sup> September, 2019.

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
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8. Date on which the file goes to the Bench Clerk .....
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12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....