

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

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| ITA No.982/Bang/2018 |
| Assessment year : 2006-07 |

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| Smt. Puttathayamma, Bhugathagally Vilage, Varuna Hobli, Mysore Taluk, Mysore District. PAN : CNLPP 5187 K | Vs. | The Income-tax Officer, Ward – 1(1), Mysore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri. V. Srinivasan, Advocate |
| Revenue by | : | Shri. Sunil Kumar Agarwal, Addl. CIT |

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| Date of hearing | : | 18.09.2019 |
| Date of Pronouncement | : | 20.09.2019 |

ORDER

Per Vikram Singh Yadav, Accountant Member:

This is the appeal filed by the assessee against the ex-parte order passed by the learned CIT(A), dated 20.09.2017, wherein the appeal of the assessee has been dismissed *in limine* on account of delay in filing the appeal by the assessee.

2. It was submitted by the learned AR that the reason for the delay in filing the appeal by 47 days was on account of non-receipt of the original demand notice from the AO. However, the learned CIT(A) has not rightly appreciated the same and has dismissed the appeal ex-parte for the assessee *in limine*. It was submitted the in identical set of facts, the Co-ordinate Bench in the case of

Smt. Chennabasavamma Vs. ITO in ITA No.981/Bang/2018 dated 05.10.2018, it was held as under:-

5. We have carefully examined the application for condonation of delay and find that the assessee has fully explained the delay in filing of the appeal. Accordingly, we condone the delay in filing of the appeal. Since the CIT(A) has dismissed the appeal of the assessee ex-arte on the point of limitation alone, we set aside the order of the CIT(A) and restore the matter to his file with the direction to adjudicate the issue on merit after affording opportunity of being heard to the assessee.

3. Similarly, in identical case of Shri. Manjunath Vs. ITO in ITA No.944/Bang/2018 dated 21.06.2019, the Co-ordinate Bench has held as under:-

3. In course of hearing of the appeal, it was submitted by Id. AR of assessee that as per the order of CIT(A), only one date of hearing was fixed on 19.09.2017 and as per para no. 3 of the order of CIT(A), it is noted by him that there was a delay of 47 days in filing the appeal and although the assessee has filed application before CIT(A) seeking condonation of delay, the delay was not condoned by the CIT(A) and hence, the appeal of the assessee was dismissed as unadmitted. He submitted that in the facts of present case, the assessee has explained the reasons for delay in filing the appeal stating that the delay was caused as a result of the AO denial to permit the inspection of records by the assessee's advocate. In our considered opinion, in the facts of present case, the delay of 47 days should have been condoned by CIT(A) and since, this was not condoned by him, we condone the delay in filing the appeal before CIT(A) and set aside the order of CIT(A) and restore the matter back to his file for decision on merit after providing

adequate opportunity of being heard to both sides. We order accordingly. In view of above decision, no adjudication on merit is called for at the present stage.

4. The learned DR was heard, who has relied on the orders of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. We find that where the assessee is not in receipt of the demand notice under section 156 which is a pre-requisite for filing the appeal before the CIT(A), the assessee has a reasonable basis for seeking condonation of delay. Further, we find that on similar fact pattern, the Co-ordinate Bench has also condoned the delay in filing the appeal in the aforesaid matters which have been brought to our notice. We accordingly condone the delay in filing the appeal before the learned CIT(A) and the matter is remanded back to the file of learned CIT(A) to decide the same on merit after providing proper opportunity to the assessee.

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

Order pronounced in the open court on this 20th day of September, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member

Bangalore.
Dated: 20th September, 2019.
/NS/*

Copy to:

1. Appellants
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.