

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "A" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

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| ITA No.141/Bang/2019 |
| Assessment year : 2012-13 |

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| Smt. Madhavi Gopinath, No.620, 2 nd Phase, 7 th Block Hosakerehalli Cross, BSK III Stage, Bengaluru-560 085. PAN – ANPPM 3538 F | Vs. | The Income-tax Officer, Ward-4(1)(4), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Shyam H.C, C.A |
| Respondent by | : | Shri Ganesh R Ghale, Advocate Standing Counsel to Dept. |

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| Date of hearing | : | 05.11.2019 |
| Date of Pronouncement | : | 08.11.2019 |

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 7/12/2018 passed by Id CIT(A)-9, Bengaluru and it relates to asst. year 2012-13.

2. The assessee is aggrieved by the decision of Id CIT(A) in refusing to condone the delay and also in confirming the addition made by the AO u/s 68 of the Act.

3. The Id counsel for the assessee submitted that the Id CIT(A) has decided the appeal ex-parte. Further he submitted that there

was delay of 121 days in filing appeal before the ld CIT(A) and the first appellate authority has also refused to condone the delay. The ld AR submitted that he appeared before the ld CIT(A) on 20/10/2017 and sought adjournment on 29/11/2018. The case was adjourned on next day on 30/11/2018 and the same has escaped his attention. Hence he did not appear before Ld CIT(A). However, the ld CIT(A) has proceeded to dispose of the appeal ex-parte. The Ld CIT(A) has also refused to condone the delay.

4. The ld AR further submitted that the delay of 121 days in filing appeal before the ld CIT(A) has occurred for the reason that the representative of the assessee who assisted her in income tax proceedings before the AO did not bring the asst. order to the notice of the assessee. The ld AR submitted that the assessee has filed an Affidavit explaining reasons for the delay. Accordingly he prayed that the delay in filing appeal before the CIT(A) may be condoned and the appeal may be decided on merits.

5. I heard ld DR and perused the record. Before the Tribunal the assessee has filed Affidavit explaining the delay in filing the appeal before ld CIT(A). For the sake of convenience I extract below the Affidavit given by the assessee.

“I, Smt.Madhavi Gopinath w/o Gopinath aged about 44 years, residing at No.71, K R Road, Basavanagudi , Bangalore-560037, solemnly affirm and state on oath as follows.

1. *That, I am an assessee holding PAN no.ANPPM3538F in respect to which an assessment proceedings was carried out by ITO Ward 4(1)(4).*
2. *That, during the assessment proceeding for AY 2012-13 one of the finance manager by name Mr.K.R.Prakash attended the proceedings by representing on behalf of me.*
3. *That, believing that the said representative had sufficient knowledge, I relied upon his representation. However later on I was informed by the said representative that I had to pay tax of Rs. 10,02,797/- for which I have also paid the same without getting information about the proceedings.*
4. *That, after payment of tax the said representative resigned from our company after which the order passed by the Assessing officer came to my knowledge on 10.08.2015. There after the said representative was not available for communication and I contacted my chartered accountant regarding the same for which I was suggested to file an appeal before the CIT Appeals. Further I entrusted to my chartered accountant the work on preferring an appeal in respect of which appeal was preferred before CIT Appeals on 21.08.2015.*
5. *That, the appeal was preferred along with an application for an condonation of delay of 121 days with the reason that I dint know have knowledge about the said order nor I was informed by the said representative except the requirement to pay tax.*
6. *That, the learned CIT (Appeals) insisted upon filing an affidavit by the said representative in spite of informing that he is not available for communication despite best effort.*
7. *That, my chartered accountant had requested for time to trace the earlier representative subsequent to which learned CIT Appeals has passed in impugned*

order without giving opportunity to fully represent my case.

That, I have preferred an appeal before this Hon'ble Tribunal in ITA.No.141/Bang/2019 against the order passed by learned CIT (Appeals).

I declare that whatever has been stated and declared by me herein above is true to the best of my knowledge, information and belief and I have stated the same consciously and honestly.”

6. On a perusal of the Affidavit, I noticed that the assessee was dependent upon her representative named K.R Prakash for representing the Income-tax matters before the AO. The asst. order passed by the AO also mentions the name of K.R Prakash as the person who appeared before him. Since the above said K.R Prakash was not available for communication, it is stated that the assessee was not aware of the asst. order. Thereafter the assessee has approached a C.A, who advised the assessee to file appeal before ld CIT(A) with a delay of 121 days. In my view the reasoning given by the assessee constitutes sufficient cause for the delay in filing of appeal before the ld CIT(A). Accordingly I condone the delay in filing the appeal before the ld CIT(A).

7. I noticed that the ld CIT(A) has not decided the appeal on merits. In the interest of natural justice, I am of the view that the assessee should be provided with one more opportunity to present her case before ld CIT(A). Accordingly I set aside the order passed by ld CIT(A) and restore all the issues to his file for adjudicating

them afresh on merits. I also direct the assessee to cooperate with the ld CIT(A) for expeditious disposal of the appeal.

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

Order pronounced in the open court on **8th November, 2019.**

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

Bangalore,
Dated, the 8th November, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore