

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

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| ITA No. 3268/Bang/2018 |
| Assessment Year : 2012 - 13 |

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| M/s Viswa Developers & Builders, 2/10, I Floor, Mallikarjun Avenue, Koppikar Road, Hubli - 580020 PAN: AAFV0652E | vs. | ITO, Ward - 3 (5), Hubli |
| APPELLANT | | RESPONDENT |
| Assessee by | : | Shri S. V. Ravishankar, Advocate |
| Revenue by | : | Smt. R. Premi, JCIT DR |
| Date of Hearing | : | 14.11.2019 |
| Date of Pronouncement | : | 13.12.2019 |

ORDER

PER SHRI A.K. GARODIA, AM:

This appeal is filed by the assessee and it is directed against the order of learned CIT (A), Hubballi dated 27.09.2018.

2. This appeal is filed by the assessee after a delay of 3 days. The assessee has moved an application for condonation of delay along with an affidavit and in the same, it is stated that at the time of filing the appeal, the representative of the assessee filed the appeal with D. R's. office on 03.12.2018 by mistake and on realization of the mistake, the appeal was filed with Asstt. Registrar ITAT on 06.12.2018 and because of this, there was a delay of 3 days and it should be condoned. Although learned DR of the revenue submitted that delay should not be condoned but in the facts of the present case and in the interest of justice, we condone the delay.

3. Although several grounds are raised by the assessee but the grievance is only one that penalty of Rs. 1.50 lacs u/s 271B is not justified. The assessee has also raised 5 additional grounds and out of that, one additional ground i.e. Ground No. 2 is this that the

penalty order is time barred u/s 275 (1) (c) of I. T. Act. In course of hearing, arguments were made on this aspect only and it was submitted that this issue was not raised before CIT (A) and since, this is a legal issue, the additional ground should be admitted and the entire matter should be restored to CIT (A) for fresh decision along with time barring aspect. Learned DR of the revenue although opposed to admission of the additional ground but we admit the same because it is a legal issue. We restore the entire matter back to CIT (A) with a direction that he should first decide this aspect as to whether the penalty order is time barred u/s 275 (1) (c) of I. T. Act. If the assessee succeeds on this issue than nothing remains but if the assessee fails on this issue, the merit of the penalty should be decided afresh because the decision on merit should be after deciding the technical aspect.

4. In the result, the appeal of the assessee is allowed.

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

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Bangalore,

Dated, the 13th December, 2019.

/NS/

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

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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.