

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

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

ITA No.2388/Bang/2018
Assessment year : 2009-10

M/s Omkareshwara Charitable Trust, Survey No.21, Puttaiahna Koppal, Kasaba Hobli, Pandavapura Tq., Mandya.	Vs.	The Income-tax Officer, Ward-1, Mysore.
PAN – AAATO 1468 J		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Shri M Narasimha Raju, J.C.I.T (DR)

Date of hearing	:	05.12.2019
Date of Pronouncement	:	13.12.2019

**ORDER**

*Per B.R Baskaran, Accountant Member :*

The assessee has filed this appeal challenging the order dated 13-07-2018 passed by Ld CIT(A), Mysuru and it relates to the assessment year 2009-10.

2. The Ld Counsel appearing for the assessee submitted that the assessee had filed appeal before Ld CIT(A) challenging the penalty levied by the AO u/s 271(1)(c) of the Act. He submitted that there was delay of 80 days in filing appeal before Ld CIT(A). The assessee furnished explanations for the delay by stating that the delay has occurred due to ill health of representative. However, the Ld CIT(A)

has refused to condone the delay since the above said explanation was not supported by credible evidence. Accordingly the Ld CIT(A) has dismissed the appeal in limine.

3. The Ld A.R submitted that the assessee has offered explanations for the delay and the same was also explained in person by a representative of the assessee. He submitted that the assessee could have furnished the documents in support of the illness of the Chartered Accountant, if an opportunity was given by Ld CIT(A). In any case, the delay has not occurred at the assessee's end. He further submitted that the delay was only 80 days and in the interest of natural justice, the Ld CIT(A) should have condoned the same. He prayed that the Tribunal may kindly condone the delay occurred in filing appeal before Ld CIT(A).

4. On the contrary, the Ld D.R opposed the prayer of Ld A.R.

5. We have heard rival contentions and perused the record. Admittedly, the assessee has offered an explanation for the delay of 80 days that has occurred in filing appeal before Ld CIT(A). It is well settled proposition of law that the condonation petitions should be considered liberally, since the assessee is not going to gain anything by delaying things. In this regard, we derive support from the decision rendered by Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Ms. Katiji (167 ITR 471)(SC). As per the explanations furnished, the delay has occurred due to the ill health of the Chartered Accountant, meaning thereby, the assessee should not be faulted with for the delay that occurred at the end of

the representative. Accordingly we are of the view that the explanations furnished by the assessee for the delay would warrant that the delay should be condoned. Accordingly we condone the delay in filing appeal before Ld CIT(A).

6. We notice that the Ld CIT(A) did not have occasion to adjudicate the issue on merits, since he had dismissed the appeal in limine. Hence the issues urged on merits deserve to be set aside to his file. Accordingly we set aside the order passed by Ld CIT(A) and restore the issues urged on merits to his for adjudicating them. After affording adequate opportunity of being heard, the Ld CIT(A) may take appropriate decision in accordance with law.

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

Order pronounced in the Open Court on **13<sup>th</sup> December, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**  
Bangalore,  
Dated, 13<sup>th</sup> December, 2019.

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

/ 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.....
7. If not uploaded, furnish the reason for doing so .....
8. Date on which the file goes to the Bench Clerk .....
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk .....
12. The date on which the file goes to the Assistant Registrar for signature on the order .....
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
14. Date of Despatch of Order. ....
14. Dictation note enclosed .....