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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA. No.375/Bang/2019
(Assessment Year: 2011-12)

Shri P.V. Kempaiah (HUF),
Behind Maramma Temple,
B.B.Road, Amruthahalli,
Bangalore-560 092 ….Appellant
PAN AAOHP 1926L

Vs.

Income Tax Officer,
Ward 6(3)(2), Bangalore. ……Respondent.

Assessee By:	Shri Narendra Sharma, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	10.12.2019
Date of Pronouncement :	31.12.2019

O R D E R

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax, Bangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal :

1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.

2. The learned CIT[A] erred in law and on facts in dismissing the appeal of the Appellant by refusing to condone the delay of 375 days in filing the appeal before the learned Commissioner of Income-tax [Appeals], as per Section 249[3] of the Act without going into the merits of the case of the Appellant.

2.1 The learned CIT[A] is not justified in holding that the explanation tendered by the appellant for the delay of 375 days in filing the appeal was not satisfactory and cannot be considered as sufficient cause under the facts and in the circumstances of the appellant's case.

2.2 The learned CIT[A] ought to have appreciated that the appellant was guided by his Authorized Representative who had advised against filing an appeal due to the judgement of the jurisdictional High Court in the case of Dr. T.K.Dayalu and the agreed nature of the assessment and hence, the appellant acting on the said advice had not taken any steps to file an appeal against the assessment order within the time allowed under the facts and in the circumstances of the appellant's case.

2.3 The learned CIT[A] ought to have appreciated that the appellant realized that there were other grounds with regard to the extent of capital gains assessed as well as the extent of exemption u/s.54F of the Act that ought to have been urged in the appeal and the appellant understood this position only when another Chartered

Accountant who was consulted in connection with recovery proceedings explained the same and thereupon immediate steps were taken to file the appeal before the learned CIT[A].

2.4 The learned CIT[A] ought to have regarded the aforesaid explanation tendered by the appellant as reasonable and sufficient cause for the delay in filing the appeal, which delay was caused solely on account of erroneous professional advice received by the appellant in first instance especially when it was clear that the appellant had not either deliberately or intentionally delayed in filing the appeal and consequently, the learned CIT[A] ought to have condoned the delay in filing the appeal and admitted the same and disposed off on merits under the facts and in the circumstances of the appellant's case.

2.5 The learned CIT[A] failed to appreciate the bonafide reasons given by the appellant for not preferring the statutory appeal in time and denied the appellant of being heard on its merits merely on grounds of technicalities, which is against the principles of natural justice on the facts and circumstances of the case.

2.6 The learned CIT[A] failed to appreciate that the Appellant ought not have been denied remedy by way of appeal on mere technicalities in view of the landmark Supreme Court judgement in Collector, Land Acquisition Vs. Mst. Katiji reported in 167 ITR 471[1987] and ought to have exercised the discretion vested as per the provisions of section 249 [3] of the Act in the most judicious manner to promote and uphold the substantial cause of justice on the facts and circumstances of the case.

3. Without prejudice to the above, the order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

4. Without prejudice to the above, the learned CIT[A] is not justified in not disposing off the grounds raised by the appellant with regard to the assessing a sum of Rs. 2,59,52,900/- as Income from Long Term Capital Gains as against a sum of Rs.1,92,36,100/- reported by the appellant under the facts and in the circumstances of the appellant's case.

5. The learned CIT[A] ought to have disposed off the grounds raised by the appellant with regard to the assessing a sum of Rs.5,00,000/-, being the Non-refundable deposit received by the appellant, under the head "Income from Other Sources" under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the above, the extent of capital gains assessed in the hands of the appellant is highly excessive and is liable to be reduced substantially.

7. Without prejudice to the above grounds urged, the authorities below are not justified in restricting the exemption claimed u/s.54F of the Act, to Rs.24,72,700/- as against the sum of Rs.2,89,24,604/- allowable u/s.54F of the Act, under the facts and in the circumstances of the appellant's case.

8. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies themselves liable to be charged to interest u/s.234A, 234-B and 234-C of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

9. For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has not condoned the delay of 375 days in filing the appeal without considering the submissions and also the explanations made in the course of appellate proceedings. The learned Authorised Representative further submitted that the delay is not wanton and also referred to the order of at at page 3 where

there is a reference to the co-owners of the property entered into Joint Development Agreement (JDA) and one of the co-owner Mr. P.V. Krishna, HUF, the Tribunal has condoned the delay of 375 days and restored the issue to the file of CIT(Appeals) for adjudication afresh. Therefore the assessee is also one of the co-owners and delay also the same and prayed the appeal be condoned and matter be restored to the file of CIT(Appeals). Contra, the learned Departmental Representative relied on the orders of CIT(Appeals).

4. We heard the rival contentions and perused the material on record. The learned Authorised Representative has restricted his arguments only to the extent of condonation of delay and supported his stand relying on the decision of the co-ordinate Bench of Tribunal in the case of co-owners of the assessee in ITA No.380/Bang/2019 for the Assessment Year 2011-12 dt.28.08.2019 and we consider it appropriate to refer to the decision of the co-ordinate Bench at page 3 paras 5, 6 & 7 which are read as under :

" 5. We noticed that the ld 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 ld 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 assessees 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 ld CIT(A). Since the ld CIT(A) has not adjudicated the issues on merits, we set aside the order passed by the ld CIT(A) and restore all issues to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee."

We respectfully following the co-ordinate Bench of the Tribunal in the case of co-owner where the facts are similar and identical and delay also same, we condone the delay in filing the appeal before the CIT(Appeals) and restore the entire

disputed issue to the file of CIT(Appeals) to adjudicate on merits and pass a speaking order and provide adequate opportunity of hearing and assessee also co-operate for early disposal of the assessee and allow the appeal of assessee for statistical purposes.

5. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 31st Dec., 2019.

Sd/-	Sd/-
(B.R. BASKARAN)	**(PAVAN KUMAR GADALE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 31.12.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore