

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1983/Bang/2017
Assessment year : 2010-11

Mr. Lokesh Chandrappa, No.138, Kanakapura Road, Ganigiri Palya, Banashankari 6 <sup>th</sup> Thalaghattapura, Bengaluru – 560 062. <b>PAN : AFWPC 6561 P</b>	Vs.	The Income Tax Officer, Ward – 1(4), New Ward – 3(2)(4), Bengaluru.
APPELLANT		RESPONDENT
Assessee by	:	Shri. B. S. Balachandran, Advocate
Revenue by	:	Shri. Sunil Kumar Agarwal, Addl. CIT
Date of hearing	:	27.11.2019
Date of Pronouncement	:	17.01.2020

**ORDER**

*Per A. K. Garodia, AM*

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-3, Bengaluru, dated 06.09.2017 for Assessment Year 2010-11. The ground raised by the assessee in this appeal are as under:-

1. *The order of the Hon CIT (A) is contrary to law, facts, evidences on record and is not maintainable in law.*
2. *The Hon CIT (A) erred in dismissing the appeal which has undesirable effect of subverting the justice in as much as an order not maintainable in law has been sustained.*
3. *The Hon CIT (A) failed to appreciate the legal principles as enunciated by the judicial decisions in regard to prayer for condonation of delay in as much as the Hon CIT (A) has failed to consider*

*whether non condonation of delay would result in throwing out a meritorious case resulting in injustice.*

4. *The Hon CIT (A) erred in not considering the legal principles as stated in the facts of the case under the case before the Hon ITAT.*
5. *The Hon CIT (A) erred in not considering the decision of the Hon ITAT for the year 2Q09-10 brought to his notice.*
6. *For these are any other grounds of appeal that may be urged at the time of hearing it is prayed that the Honourable ITAT may be pleased to allow this appeal in the Interest of Equity and Justice.*

2. In the course of hearing, it was submitted by learned AR of the assessee that admittedly, there was a delay of 1397 days in filing the appeal before the CIT(A) but such delay was duly explained by the assessee before the CIT(A) along with filing of affidavit before CIT(A) as has been noted by the learned CIT(A) in para 3.1 of his order. But in spite of this, he had declined to condone the delay in filing the appeal before him. It was submitted that in view of these facts of the present case, the delay in filing the appeal before CIT(A) should be condoned and instead of restoring the matter back to the file of CIT(A) for a decision on merit, it should be decided here because under similar facts in A. Y. 2009 – 10, the tribunal restored the matter to AO but since, learned CIT (A) cannot restore to AO, it will come to tribunal again if it is remanded to CIT (A) for a decision on merit and hence, if it is decided here, this extra proceedings before CIT (A) and tribunal can be avoided. He submitted a copy of this tribunal order in ITA No. 1254/Bang/2015 dated 09.11.2016. He also submitted a copy of the judgment of Hon'ble Karnataka High Court in assessee's own case for Assessment Year 2009-10 in WP No.4349/2018 dated 25.07.2019 and pointed out that in that year i.e., in Assessment Year 2009-10 in spite of direction of the Tribunal, the AO did not decide the issue after considering peak credit in the bank account and as per this judgment, the Hon'ble Karnataka High Court has directed the AO to

comply with this Tribunal order and approved the Tribunal order in which the Tribunal held that the addition if any to be made should not be more than the peak credit in the bank account of the assessee. He submitted that since, the issue is squarely covered by these judgments, in the present year also, similar order may be passed in stead of remanding the matter to CIT (A). Learned DR of the Revenue supported the order of CIT(A).

3. We have considered the rival submissions. First, we decide this issue as to whether the delay in filing the appeal before CIT(A) should be condoned or not. For this purpose, we first reproduce para 3.1 from the order of CIT(A). This para reads as under:-

*“3.1 The appellant has made a request for condoning the delay. The appellant has also filed an affidavit in this regard. The submissions of the appellant are as follows: The Appellant most respectfully states as under:*

- 1. That there is a delay of 1370 days in filing the appeal.*
- 2. That the delay in filing is clue to the fact that the Appellant was in severe financial crisis and left Bangalore in search of job and always on constant move outside Bangalore to eke out the lively hood\_ The appellant is now working in Pondicherry clue to family problems and also financial condition of the appellant. The appellant is also having problems within the family due severe financial crises. All the above factors contributed to the delay in filing the appeal. The appellant was unable to pay any attention when he was outside Bangalore most of the time during above said period. In addition to the above submissions the appellant was also not keeping good health. That an Affidavit explaining the causes for delay in filing the appeal memo is enclosed.*

*In view of the above it is prayed that the delay may be condoned and the appeal may be admitted for adjudication on merits in the interest of equity and justice.*

*Sri.Lokesh Chandrappa, Son of Sri\_Chandrappa aged about 33 years residing at No.138, Gangigarapalya, Thalaghattapura, Bangalore-560062, do hereby solemnly affirm and state an oath as under:*

- 1. I am assessed to tax on the file of ITO-Ward-4(4). Bangalore.*
- 2. I am filing this affidavit in connection with my appeal which is being belated filed before the CIT (A)-3, Bangalore Bench, Bangalore by 1370 days.*
- 3. That I am the Appellant in the Appeal to be filed by me before the CIT (A) -2, Bangalore on 30/01/2017. And I am aware of the facts of the case and hence I swear to this Affidavit.*
- 4. That there is a delay of 1370 days in filing the appeal and hence a petition for condonation has been filed along with the appeal memo.*
- 5. That whatever is stated in the petition for condonation of delay accompanying this-affidavit is true to the best of my knowledge and belief and I believe them to be true.*
- 6. I am conversant with the facts of the case and hence I swear to this Affidavit.*
- 7. That what is stated in para's 1 to 6 thereof is true to the best of my knowledge and belief and I believe them to be true and hence I am swearing to the Affidavit."*

4. As per the above para reproduced from the order of CIT(A), it is seen that it is explained by the assessee before the CIT(A) that during the relevant year, the assessee was in severe financial crisis and left Bangalore in search of job and always on constant move outside Bangalore for livelihood and because of this reason, the assessee could not file the appeal in time. In para 3.2 of his order, it was held by CIT(A) that the reasons given by the assessee are generic and do not explain the reasons for delay of 1379 days because the reasons for delay are not supported by any evidence and regarding affidavit of the assessee submitted before him, it is stated by the learned CIT(A) that the affidavit given by the assessee is a self-served document as the same is not supported by any documentary evidence. In the facts of the present case, we

feel it proper to condone the delay in filing the appeal before CIT(A). We order accordingly and we condone the delay in filing the appeal before CIT(A).

5. Having condoned the delay in filing the appeal before CIT(A), generally we remand the matter back to CIT(A) for a decision on merit. But in the present case, we find that the only issue in dispute on merit is regarding addition made by the AO of Rs.2,13,21,230/- being the amount of total credits in the bank account during the period 01.04.2009 to 31.03.2010. In Assessment Year 2009-10, similar issue was there before the Tribunal and as per the Tribunal order available on record, an addition of Rs.58,80,250/- was made by the AO in that year as per AIR communication regarding cash deposits in bank and the Tribunal restored back the matter to the file of AO for granting one more opportunity to the assessee for explaining the source of the cash deposit with this direction that in any case, the addition if any should not be more than the peak credit in the bank account. In the present year also, since similar issue is involved, to avoid multiplicity of avoidable proceedings, we feel it proper to restore back the matter to the file of AO instead of restoring back the matter to the file of CIT(A) because now, CIT(A) has no power to remand the matter back to the AO and in the facts of the present case, it is proper to remand the matter back to the AO to work out the peak credit in the bank account. Hence, we restore the matter on merit to the file of the AO with a direction that one more opportunity should be provided to the assessee for explanation of the source of cash deposit and if the assessee is able to explain the cash deposit in bank account, then obviously, no addition can be made regarding cash deposit into bank but if the assessee is not able to explain the source of cash deposit in the bank then also, the addition to be made should not exceed the peak credit in the bank account. The AO should

pass necessary order as per law as per above direction after providing reasonable opportunity of being heard to the assessee.

6. In the result, assessee's appeal for Assessment Year 2010-11 is allowed for statistical purposes.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-  
**(A. K. GARODIA)**  
**Accountant Member**

Bangalore.

Dated: 17<sup>th</sup> January, 2020.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.