

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD "SMC" BENCH, HYDERABAD**

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

**ITA No. 1014/HYD/2019
(Asst. Year : 2010-11)**

Sridhar Rao Maroju, vs. ITO, Ward-9(1),
Plot No. 118, 8-3-1069, Hyderabad.
Doyen Villa Apartments,
Srinagar Colony, Hyderabad.

PAN No. ACAPM 9634 L
(Appellant)

(Respondent)

Assessee by : Shri A.V. Raghuram – AR.
Department By : Shri Nilanjan Dey – Sr.DR

Date of hearing : 02/12/2019.
Date of pronouncement : 22/01/2020.

ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-7, Hyderabad, dated 28/05/2019 for the Assessment Year 2010-11.

2. Appeal of the assessee was dismissed by the Id. CIT(A) on the ground that there was a delay of 1887 days in filing the appeal. When this appeal is taken up for hearing, Id. counsel for the assessee has submitted that against the order of the Assessing Officer dated 18/03/2013, assessee has preferred an appeal u/sec. 264 before the Pr.Commissioner on 30/09/2013.

The Pr.Commissioner has not passed any order on it and is pending before him. Therefore, on 20/06/2018 by filing a letter, assessee requested the Pr.Commissioner to withdraw the appeal with liberty to file appeal before the Id. CIT(A). Even on the withdrawal application, the Pr.Commissioner has not passed any order, therefore assessee immediately filed an appeal before the Id. CIT(A), therefore delay is caused and requested for condonation of delay.

3. On the other hand, Id.DR strongly opposed the huge delay and submitted that delay cannot be condoned.

4. I have heard both the parties and perused the material available on record.

5. There is a delay in filing the appeal. Delay is caused due to filing of appeal before the Pr.Commissioner-7, Hyderabad, who not passed any order on it. Ultimately, on 20/06/2018 the assessee has withdrew the appeal with a request to file appeal before the Id. CIT(A), even on this application also, no order is passed. However, the assessee has immediately filed appeal before the Id.CIT(A) hence, there is a delay. I find that delay is occurred due to wrong approach of the assessee i.e. instead of filing appeal before the Id. CIT(A), he filed the same before the Pr.Commissioner. The Pr.Commissioner neither rejected the

appeal nor passed any order. The Pr.Commissioner being a senior officer under the Income-tax Act he supposed to have passed the orders as early as possible, but the appeal filed by the assessee kept pending near about 05 years even so far no order is passed. Under these circumstances, the assessee failed to get substantial justice, therefore in my opinion on technical grounds, the case of the assessee cannot be dismissed, the substantial justice has to be delivered to the assessee. Recently, the Hon'ble Andhra Pradesh High Court in the case of *M/s. Meridian Promoters P. Ltd. Vs. DCIT* in ITTA No. 157/2019, dated 18/10/2019 has considered the same issue and held that *"While considering the applications for condonation of delay, what is to be seen is whether the interest of the revenue will stand protected, even while recognizing the right of the assessee to exercise the statutory remedies available to the assessee and the statutory right of appeal cannot be made redundant by dismissing the application for condonation of delay and rejecting the appeal on technical grounds. In our considered view when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, as held by the Supreme Court in Collector, Land Acquisition, Anantnag v. Mst. Katiji (167 ITR 471)"*.

6. By following the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (supra) and also by following the judgment of the Hon'ble Andhra Pradesh High Court in the case of *M/s. Meridian Promoters P. Ltd.* (supra) and also by considering the facts and circumstances of the case, I find that it is a fit case to condone the delay. Accordingly, delay is condoned. In view of the above, the order passed by the Id. CIT(A) is set aside and remit the matter back to the Id. CIT(A) with a direction to adjudicate the appeal on merits *denovo* in accordance with law. Thus, this appeal filed by the assessee is allowed for statistical purpose.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order Pronounced on this 22nd day of Jan., 2020.

Sd/-
(V. DURGA RAO)
Judicial Member

Dated: 22nd January, 2020.

vr/-

Copy to:

1. *The Assessee – Sridhar Rao Maroju, Plot No. 118, 8-3-1069, Doyen Villa Apartments, Srinagar Colony, Hyderabad.*
2. *The Revenue – ITO, Ward-9(1), Hyderabad.*
3. *The Pr.CIT-7, Hyderabad.*
4. *The CIT(A)-7, Hyderabad.*
5. *The D.R., Hyderabad.*
6. *Guard file.*

By order

Sr. Private Secretary,
ITAT, Visakhapatnam.