IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

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

ITA No. 1673 & 1674/Bang/2016
Assessment Year : 2010 – 11

Shri B. Manjunatha, #781/4-45, Saraswathi Nagar, "A" Block, Davangere **PAN: BHLPM9782L**		vs.	ITO, Ward – 2, Davangere
APPELLANT			RESPONDENT
Assessee by	:	Shree V. Srinivasan, Advocate	
Revenue by	:	Shri Sunil Kumar Agarwal, Addl. CIT DR	
Date of Hearing		:	27.11.2019
Date of Pronouncement		:	30.01.2020

O R D E R

PER SHRI A.K. GARODIA, AM:

Both these appeals are filed by the same assessee for same assessment year. One appeal is arising in course of assessment proceedings and the second appeal is arising in course of penalty proceedings u/s 271 (1) (c) of I T Act. These appeals are directed against two separate orders of CIT(A) – Davangere both dated 30.06.2016. Both appeals were heard together and are being disposed of by way of this combined order for the sake of convenience.

2. The quantum appeal filed by the assessee before the tribunal is delayed by 13 days and the assessee has made an application for condonation of delay and an affidavit is also filed in this regard. This explained that both the orders of CIT (A) are dated 30.06.2016 but the order in quantum appeal was served on the assessee on 08.07.2016 but the order in penalty proceedings was served on 25.07.2016. It is submitted that both orders of CIT (A) were handed over to the Tax Consultants for necessary action and it was advised by him that second appeal has to be filed before the tribunal but because both orders

of CIT (A) are of same date i.e. 30.06.2016, he wrongly assumed that both orders were served on the assessee on 25.07.2016 and delay was caused in filing the quantum appeal because of this. He submitted that in the interest of justice, this small delay of 13 days should be condoned. Although learned DR of the revenue submitted that delay should not be condoned but in view of the facts noted, we feel it proper to condone the delay. We condone the same and admit the appeal.

3. First, we take the quantum appeal. In this appeal, this is the grievance of the assessee that CIT (A) was not justified in dismissing the appeal of the assessee by refusing the condone the delay in filing the appeal.

4. In course of hearing, learned AR of the assessee submitted that in para 4 of his order in quantum proceedings, learned CIT (A) has noted that there was delay of 166 days in filing of that appeal and he has also noted the reasons of delay submitted by the assessee as per which, it was submitted that the AO promised to drop penalty proceedings if the assessee pays the assessed tax and does not file appeal against quantum addition. But later, the AO passed penalty order and then the assessee filed quantum appeal also. He submitted that under these facts, delay should have been condoned by CIT (A). He submitted that since learned CIT (A) did not condone the delay, the assessee is before the tribunal. He submitted that in the facts of the present case, the delay should be condoned and the matter should be restored to CIT (A) for a decision on merit. Learned DR of the revenue supported the order of CIT (A).

5. We have considered the rival submissions. In view of the facts noted by CIT (A) in para 4 of his order and in the interest of justice, we condone the delay in filing the quantum appeal before CIT (A) and restore the matter back to his file for a decision on merit.

6. In the result, the quantum appeal of the assesssee is allowed for statistical purposes.

7. Now we take up the penalty appeal but since, the appeal in quantum proceedings is restored to CIT (A) for a decision on merit, we feel it proper to restore the penalty appeal also to his file for a fresh decision after deciding the quantum appeal. We order accordingly.

8. In the result, the penalty appeal of the assesssee is also allowed for statistical purposes.

9. In the combined result, both the quantum appeal and penalty appeal of the assesssee are allowed for statistical purposes.

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

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	(ARUN KUMAR GARODIA)
Judicial Member	Accountant Member

Bangalore,
Dated, the 30th January, 2020.
/NS/

Copy to:

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.