

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “B”, BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.169/Bang/2020 : Asst.Year 2015-2016

Sri.Kota Satyam Balkrishna Setty “Srinivasa Nilaya”, No.1679, 15 <sup>th</sup> Main, Banashankri II Stage Bangalore – 560 070. <b>PAN : AAQPS1265B.</b>	Vs.	The Income Tax Officer Ward 7(2)(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Prashanth G.S., CA  
Respondent by : Sri.Priyadarshi Mishra, JCIT-DR

<b>Date of Hearing : 15.10.2020</b>	<b>Date of Pronouncement : 15.10.2020</b>
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**ORDER**

**Per George George K, JM :**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 23.03.2019. The relevant assessment year is 2015-2016.

2. There is a delay of 251 days in filing this appeal. The assessee has filed a petition for condonation of delay. The reasons stated in the petition for condonation of delay is that the Counsel who represented the assessee earlier was changed and the assessee had to find a new Counsel and seek his legal opinion for filing an appeal before the Tribunal, which took time. It was submitted that the delay in filing the appeal was neither deliberate nor intentional and it was out of bonafide reasons. Therefore, it was prayed the delay in filing this appeal may be condoned. The learned AR relied on the judgment of the

Hon'ble Apex Court in the case of Collector, Land Acquisition v. MST Katiji reported in 167 ITR 471.

2.1 The learned Departmental Representative was duly heard.

2.3 We have heard the rival submissions and perused the material on record. The Hon'ble Karnataka High Court in the case of Maria Social Service Society v. CIT reported in 99 taxmann.com 380 had held that it is settled position of law that while condoning the delay, the Court should take a lenient view regarding the sufficiency of reasons. The Rule of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. In the instant case, the assessee's Counsel was changed. The new Counsel had to be identified by the assessee and his legal opinion was sought for filing the appeal to the Tribunal. This took some time and has resulted in delay in filing the appeal before the Tribunal. We find the delay in filing of the appeal cannot be attributed to any laches on the part of the assessee. Hence, we condone the delay of 251 days in filing of this appeal before the Tribunal and proceed to dispose of the case on merits.

3. The brief facts of the case are as follow:

The assessee is a partner in a firm. For the assessment year 2015-2016, the assessee had declared income of Rs.1,42,720 and paid self-assessment tax of Rs.1,02,81,404. The entire self-assessment tax was claimed as refund. The assessee explained that he was to receive salary and

remuneration from a partnership firm amounting to Rs.2,30,37,931. It was stated that due to some disputes with other partners, salary and remuneration was not received. Therefore, it was submitted that the self-assessment tax paid amounting to Rs.1,02,81,404 was claimed as refund. The A.O. found from the computation of income of the partnership firm that the above mentioned sum has been paid to the assessee and same has been claimed as deduction u/s 37 of the I.T.Act by the firm. Accordingly, A.O. added this amount to the total income of the assessee. The view taken by the Assessing Officer was confirmed by the CIT(A).

4. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal before the Tribunal. The learned Counsel for the assessee submitted that the CIT(A) has passed an *ex parte* order by rejecting the assessee's application for adjournment of the case. Therefore, it was prayed that the issue may be restored to the files of the CIT(A). On merits, it was contended that the assessee has got ample evidence to prove that he was not in receipt of Rs.2.30 crore as salary and remuneration from the partnership firm.

5. The learned Departmental Representative did not have any serious objection with regard to the case being remanded to the CIT(A).

6. We have heard the rival submissions and perused the material on record. The case was posted before the CIT(A) on 18.12.2019, 11.03.2019 and 21.03.2019. When the case was

posted for hearing on 21.03.2019, the assessee had sought an adjournment. The adjournment application was rejected and the CIT(A) decided the issue *ex parte*. In the interests of justice and equity, we are of the view that the one more opportunity shall be provided to the assessee. Accordingly, we restore the case to the files of the CIT(A). The CIT(A) shall afford a reasonable opportunity of hearing to the assessee before a decision is taken in the matter. The assessee shall cooperate with the CIT(A) and furnish necessary evidence called for. The assessee shall not seek unnecessary adjournment. It is ordered accordingly.

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

Order pronounced on this day of 15<sup>th</sup> October, 2020.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 15<sup>th</sup> October, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bengaluru
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore