

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.965/Bang/2017
Assessment Year : 2011-12

M/s. Devi Enterprises, Shri K Mehfuz Ali Khan, Partner No.1050/H, Railway Grand Twinlance Timmancherla Guntakal, A.P.515 801  <b>PAN NO :AAQFM5466J</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Central Circle-1(3) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Mayank Jain, A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

<b>Date of Hearing</b>	:	05.11.2020
<b>Date of Pronouncement</b>	:	06.11.2020

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the common order dated 20.1.2017 passed by Ld. CIT(A)-11, Bengaluru and it relates to the assessment year 2011-12. The assessee is aggrieved by the decision of Ld. CIT(A) in dismissing the appeal of the assessee in limini without condoning the delay in filing the appeal before him. This appeal relate to quantum assessment proceedings.

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2. We notice that the appeal came to be filed before Tribunal after a delay of 25 days. The assessee has filed a petition praying the Bench to condone the delay. It is stated in the petition that the delay has happened due to termite cleaning work undertaken in the office of the counsel of the assessee. We heard Ld. D.R. on this preliminary issue. Having regard to the submissions made by the assessee in the petition, we are of the view that there was reasonable cause for the delay and the same deserves to be condoned. Accordingly we condone the delay in filing appeal before the Tribunal and admit the appeal for hearing.

3. We heard the parties and perused the record. We notice that the appeal came to be filed before Ld. CIT(A) after a delay of more than 21 months. Though the assessee has furnished a petition praying for condoning the delay, the reasons given by the assessee were not accepted by Ld. CIT(A) to be reasonable and accordingly dismissed the appeal of the assessee in limini without admitting it. Further, on a perusal of order passed by Ld. CIT(A), we notice that the assessee was not represented before Ld. CIT(A), even though the first appellate authority has posted the cases for hearing on three occasions.

4. The Ld. A.R. submitted that the partners of the assessee firm were facing several legal issues and hence they could not appear before Ld. CIT(A). He submitted that the Ld CIT(A) has passed the impugned orders ex-parte, without hearing the assessee.

5. We notice that the Ld CIT(A) has passed the order without hearing the assessee, since the assessee did not appear before him, even though three opportunities were given. However, the Principles of natural justice warrant that no one should be condemned

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unheard. In the instant case, we notice that the Ld. CIT(A) has dismissed the appeal of the assessee in limini without condoning the delay in filing appeal and also without hearing the assessee. Hence there was no occasion for the Ld. CIT(A) to pass the orders on merits. Under these set of facts, we are of the view that, in the interest of natural justice, the assessee should be provided with one more opportunity to present its case before Ld. CIT(A). In our view, affording one more opportunity to the assessee, in the facts and circumstances of the case, would promote cause of justice.

6. Since the assessee has not appeared before Ld. CIT(A) despite giving 3 opportunities, we are of the view that the assessee should be imposed a cost for its delinquency. Accordingly, we impose a cost of Rs.2,000/- (Rs. Two thousand only) upon the assessee, which shall be paid by the assessee to the credit of the Income Tax Department as “other fees” within two months from the date of receipt of this order.

7. Subject to the payment of above said cost of Rs.2,000/- as stated above, we set aside the impugned order passed by Ld. CIT(A) for assessment year 2011-12 under consideration and restore all the issues including the issue of delay in filing appeal before him, to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee. We also direct the assessee to extend full cooperation to Ld. CIT(A) for expeditious disposal of the appeal.

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8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 6<sup>th</sup> Nov, 2020

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 6<sup>th</sup> Nov, 2020.  
VG/SPS

Copy to:

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

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**