

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA Nos.315 & 316/Bang/2019
Assessment years : 2009-10 & 2010-11

K. Chandrashekar Reddy, Plot No.31, SBI Colony, Near Housing Board Water Tank, Gandhinagar, Bellary – 583 101. PAN: AFYPR 4593J	Vs.	The Principal Commissioner of Income Tax, Aaykar Bhavan, Sedam Road, Kalaburgi – 585 105.
APPELLANT		RESPONDENT

Appellant by	:	Shri B S Balachandran, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.03.2021
Date of Pronouncement	:	17.03.2021

ORDER

Per Chandra Poojari, Accountant Member

These appeals by the assessee are directed against the separate orders, both dated 16.01.2017 of the Pr. CIT, Kalaburagi, passed u/s. 263 of the Income-tax Act, 1961 [the Act] relating to assessment years 2009-10 & 2010-11.

2. There is a delay of 402 days in filing the appeals before the Tribunal. In the petitions for condonation of delay, it is submitted that a notice dated 9.8.2016 was received proposing to revise the assessment order u/s. 143(3) r.w.s. 263 dated 27.3.2015 which was completed in accordance with the first revisionary order u/s. 263 passed by the CIT vide order dated 24.3.2014. The assessee appeared before the CIT and submitted that

fresh assessment order could not be subjected to revision u/s. 263 as held by the jurisdictional High Court in the case of *CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Kar)*. However, on receiving notices from the AO for fresh assessment proceedings again, the assessee on enquiry with the AO came to know that the impugned order dated 16.1.2017 was passed by the PCIT rejecting the objections. The assessee obtained certified copies of the impugned order which were supplied on 16.11.2017 and thereafter the appeals before the Tribunal were filed on 21.2.2019 causing a delay of 402 days. It was submitted that the assessee was under the impression that if the first revisionary order was cancelled or set aside in appeal before the Tribunal, the second revisionary order would not survive. However, the Tribunal was of the view during the hearing in the open court that the appeal was infructuous subsequent to revision by the impugned order dated 16.1.2017 and it is the second order u/s. 263 which is to be contested. It is submitted that the delay was unintentional and due to a mistaken impression which is a reasonable cause for condonation of delay as held by the Hon'ble Apex Court in *Motilal Padampat Sugar Mills Co. Ltd. v. State of UP (1997) 118 ITR 326* and *Collector, Land Acquisition v. Mst. Katiji & Ors, 167 ITR 471 (SC)*. Thus, it was prayed that the delay in filing the appeals may be condoned.

3. We have heard both the parties and considered the reasons for delay put forth by the assessee. We are satisfied that the delay was due to reasonable cause and therefore condone the delay in filing both the appeals before the Tribunal.

4. During the course of hearing of the appeals, the Id. counsel for the assessee sought adjournment on the ground that the assessee has opted for Vivad Se Vishwas Scheme Act (VSVS), 2020 by filing the applications in Form 1 & Form 2. The Bench pointed out that the Bangalore Benches in such cases is dismissing the appeal as withdrawn, with liberty to seek

recall of the order, to which the Id. counsel for the assessee agreed. Accordingly, the appeals are dismissed as withdrawn. However, the assessee is at liberty to seek recall of this order in the event of non-receipt of Form No.3, or for any such reason under the VSVS.

3. In the result, the appeals are dismissed as withdrawn.

Pronounced in the open court on this 17th day of March, 2021.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th March, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.