

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD**

(THROUGH VIRTUAL CONFERENCE)

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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|---|-----------------------|-------------------------------|
| ITA No. 410/H/2020 Assessment Year: 2008-09 | | |
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| Smt. Haritha Nori Hyderabad. [PAN - AERPN9719A] | Vs. | ITO, Ward 15(1) Hyderabad. |
| (Appellant) | | (Respondent) |
| | | |
| Assessee by: | Sri Laxminiwas Sharma | |
| Revenue by: | Shri Rohit Mujumdar | |
| | | |
| Date of hearing: | 31/08/2021 | |
| Date of pronouncement: | 06/10/2021 | |

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A)-7, Hyderabad's order dated 27/11/2019 for AY 2008-09 case no. 41/2019-20 involving proceedings u/s. 154 of the Income Tax Act, 1961 ; in short "the Act" on the following grounds of appeal.

| Grounds of appeal | Tax effect relating to each Ground of appeal |
|---|---|
| 1 The learned Commissioner of Income Tax (Appeals) [CIT(A)] erred in Facts and Law while passing the order u/s 250. | |
| 2 The learned CIT(A) erred in holding that the appellant did not make any request to condone the delay ignoring that while filing form 35 itself the appellant had given the reasons for delay with a request to condone the delay which is noted by CIT(A) also in para 4 of the order. | |
| 3 The learned CIT(A) erred in ignoring that the delay in filing of appeal is neither intentional nor due to any fault on the part of appellant and hence considering this and also the fact that prima facie assessee has very strong case on merit, CIT(A) ought to have condoned the delay. | |
| 4 The learned CIT(A) erred in not disposing the appeal on merits even after taking note of the fact that assessee made submissions on merits. | |
| 5 The learned CIT(A) erred in ignoring the submissions made wherein it was clearly explained that while passing the order, the income tax officer did not allow set-off of Short-term capital loss of Rs. 54,93,417/- against the long term capital gain of Rs. 1,88,63,762/-. Such set-off is eligible as per provisions of section 70 of the Act. | |
| 6 For these and any other grounds which may be raised on or before hearing of the appeal. | |
| Total tax effect | Rs. 12,44,808 |

2. At the outset, it is brought to our notice that there is a delay of 170 days in filing the appeal. To this effect, the assessee filed an affidavit dated 17.03.2020 stating reasons for such delay in filing appeal before us. Relying on the case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, wherein it was held that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that impugned

delay of 170 days is neither intentional nor deliberate but due to the circumstances beyond assessee's control. The same stands condoned. Case is now taken up for adjudication on merits.

3. In the course of hearing, it was submitted by the ld.counsel for the assessee that the CIT(A) has dismissed the appeal of assessee for for the sole reason of non-filing of petition for condonation of delay and has not provided the assessee an opportunity of hearing to present her case.

4. We have considered the facts of the case and the request made by the assessee. We are of the view that interest of justice will be served if the matter is restored to the file of first appellate authority for deciding various grounds of appeal of the assessee on merits. Accordingly, the CIT(A) is directed to afford reasonable opportunity of being heard to the assessee and thereafter decide the appeal on merits within three effective opportunities of hearing. We direct the assessee to appear before CIT(A) with all the relevant evidences; at her own risk and responsibility to be followed by three effective opportunities of hearing.

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

Pronounced in the open court on 06th October, 2021.

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Sd/-

(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad,
Dated: 06th October, 2021.

*gmv

Copy to :

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| 1 | <i>Smt. Haritha Nori C/o Haritha Nori Laxminiwas & Co., Chartered Accountants, D.No. 6-3-569, 4th floor, Opp. RTA Office, Above BMW Showroom, Khairatabad, Hyderabad 500 082, Telangana</i> |
| 2 | <i>ITO, Ward 15(1), Hyderabad.</i> |
| 3 | <i>ACIT, Range 15, Hyderabad.</i> |
| 4 | <i>CIT(A)-7, Hyderabad</i> |
| 5 | <i>Pr.CIT-7, Hyderabad</i> |
| 6 | <i>DR, ITAT, Hyderabad.</i> |
| 7 | <i>Guard File.</i> |

| S.No. | Details | Date |
|-------|--|------|
| 1 | Draft dictated on | |
| 2 | Draft placed before author | |
| 3 | Draft proposed & placed before the Second Member | |
| 4 | Draft discussed/approved by Second Member | |
| 5 | Approved Draft comes to the Sr. PS/PS | |
| 6 | Kept for pronouncement | |
| 7 | File sent to Bench Clerk | |
| 8 | Date on which the file goes to Head Clerk | |
| 9 | Date on which file goes to A.R. | |
| 10 | Date of Dispatch of order | |