

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.460 to 466/Bang/2021 & ITA No.467/Bang/2021
AssessmentYear:2009-10 to 2015-16 & 2011-12 respectively

Anand Somashekar Markal 2,3&4 Sajjan Building, Lingadgudi Road Near Ashraya Hospital Bijapur 586 103 PAN NO :ADEPA1726G	Vs.	Deputy Commissioner of Income-tax Central Circle Belgaum
APPELLANT		RESPONDENT

Appellant by	:	Smt. JinitaChaterjee, A.R.
Respondent by	:	Shri Sumer Singh Meena, D.R.

Date of Hearing	:	18.11.2021
Date of Pronouncement	:	18.11.2021

ORDER

PER Bench:

All the appeals filed by the assessee are directed against the orders passed by Ld. CIT(A). The appeals numbered as ITA 460 to 466/Bang/2021 relate to the assessment orders passed u/s 144 r.w.s 153A of the Act for assessment years 2009-10 to 2015-16. The other appeal of the assessee numbered as ITA 467/Bang/2021 relates to the assessment order passed u/s 143(3) of the Act for the assessment year 2011-12. All these appeals were heard together

and are being disposed of by this common order, for the sake of convenience.

2. We shall first take appeals numbered as ITA No.460 to 466/Bang/2021. The Ld. CIT(A) has disposed of all the appeals ex-parte since the assessee did not appear before him. In fact, the Ld. CIT(A) has refused to condone the delay of 149 days in filing appeal before him and accordingly dismissed the appeals in limine.

3. We heard the parties and perused the record. As noticed earlier, there was delay of 149 days in filing the above said appeals before Ld. CIT(A). We notice that the assessee has filed petitions before the first appellate authority requesting him to condone the delay. The main reason given in the petition reads as under:

“9. It is submitted that the appellant/Petitioner could not file the appeal within the statutory time permitted by the statute for the reason that the appellant was under tremendous pressure and was running from pillar to post to sort out the other issues in his business since the appellant had suffered huge business losses and further the appellant’s/petitioner’s banks were on the verge of declaring the assets of the appellant/petitioner as NPA’s.

10. It is submitted that after the receipt of the impugned order of assessment the same was entrusted to the other accountant to consult the chartered accountant of the appellant/petitioner and take necessary action as regard to the impugned order of assessment passed by the learned assessing officer. The said accountant who had taken charge of the accounts from the reins of the erstwhile accountant who was handling complete accounts of the appellant/petitioner who abruptly left the services of the appellant, did not communicate about the receipt of the order passed by the learned assessing officer and further did not even appraise the appellant/petitioner as regard to the instructions given to him.”

The Ld. CIT(A) was not convinced with the reasons given by the assessee and accordingly dismissed the appeals of the assessee in limine.

4. The Ld. A.R. reiterated the reasons furnished before Ld. CIT(A) and accordingly prayed that the delay in filing appeal before Ld. CIT(A) may be condoned. The Ld. D.R., on the contrary objected to the plea put forth by Ld. A.R.

5. We heard the rival contentions and perused the record. We notice that there was delay of 149 days in filing the above said appeals before Ld. CIT(A). The assessee has furnished reasons for delay and the main reasons have been extracted in an earlier paragraph. It is a well settled proposition of law that the cause of substantial justice deserves to be preferred over technical considerations. This is so held by Hon'ble Supreme Court in the case of Collector, Land acquisition Vs. MST Katiji & Others 167 ITR 471 (SC). A perusal of the reasons given by the assessee would show that the delay has occurred due to business problems and further due to the lethargy of his employee. We are of the view that the assessee has shown sufficient reason for not filing appeals before Ld. CIT(A) within time. Accordingly, we are of the view that, in the interest of natural justice, the delay deserves to be condoned. In fact condoning the delay and adjudicating the appeals of the assessee on merits would promote cause of justice. Accordingly, we condone the delay of 149 days occurred in filing appeals before Ld. CIT(A) in each of the appeals relating to assessment years 2009-10 to 2015-16. Accordingly, the order passed by Ld. CIT(A) for the above said years are reversed.

6. Since the Ld. CIT(A) has not adjudicated the appeals on merit, we restore all the issues to his file for adjudicating the grounds urged by the assessee on merits.

7. We shall now take up the appeal filed by the assessee for assessment year 2011-12 numbered as 467/Bang/2021. We notice that the Ld. CIT(A) has passed an ex-parte order since the assessee failed to appear before him. The Ld. A.R. submitted that the assessee was facing difficulties in his business activities and hence could not appear before Ld. CIT(A). The Ld. A.R. prayed that this appeal may also be restored to the file of the Ld. CIT(A) along with other appeals so that the assessee could present its case before him. Since the Ld. CIT(A) has passed the impugned order without hearing the assessee, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to present his case before Ld CIT(A). Accordingly, we set aside the order passed by Ld. CIT(A) in this appeal and restore all the issues to his file for adjudicating them afresh.

8. We also direct the assessee to extend full cooperation to Ld. CIT(A) for expeditious disposal of the appeals.

9. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 18th Nov, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

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

Bangalore,
Dated 18th Nov, 2021.
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.