

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

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER

ITA Nos.579 & 580/Bang/2021
Assessment Year: 2017-18

Sri Manjunath Devastan 1, Ternal Pet Gadag-Betageri Karnataka PAN NO :AAITS9623D	Vs.	Deputy Commissioner of Income-tax CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Mrinalini R., A.R.
Respondent by	:	Shri Ganesh R Ghale, Standing counsel for Dept.

Date of Hearing	:	17.02.2022
Date of Pronouncement	:	17.02.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are directed against the order passed by Ld. CIT(A), National Faceless Appeal Centre, Delhi and they relate to the assessment year 2017-18. The appeal numbered as ITA 580/Bang/2021 is related to the order passed by Ld. CIT(A) against the intimation passed u/s 143(1) of the Income-tax Act,1961 ['the Act' for short]. The other appeal is related to the order passed by Ld. CIT(A) against the rectification order passed by CPC u/s 154 of the Act.

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2. We shall first take up ITA No.580/Bang/2021. We heard the parties and perused the record. We notice that there was a delay of 511 days in filing appeal before Ld. CIT(A) and hence the Ld. CIT(A) has dismissed the appeal in limine without condoning the delay. We notice that the assessee has submitted before Ld. CIT(A). The explanation given by the assessee was that it was pursuing remedy by filing rectification petitions u/s 154 of the Act before CPC, but they were rejected by CPC. Thereafter, COVID-19 Pandemic has started, which delayed the process of consulting a professional and filing appeal before Ld CIT(A). The above said explanation given for the delay in filing appeal was not acceptable to Ld. CIT(A) and hence he has dismissed the appeal.

3. The ld. A.R. submitted the calendar of events as under:-

- a) Return of income was filed by the assessee on 1.1.2018
- b) The assessee received intimation u/s 143(1) of the Act on 15.3.2019.
- c) The assessee filed rectification petition u/s 154 of the Act on 12.9.2019.
- d) The above said rectification was rejected by CPC on 13.10.2019.
- e) The assessee filed another rectification petition u/s 154 of the Act on 28.2.2020
- f) The second rectification petition was also rejected by CPC on 3.3.2020.
- g) The assessee filed the appeal before Ld. CIT(A) against the intimation u/s 143(1) of the Act on 8.8.2020.

The Ld. A.R. submitted that the above cited events would show that assessee was not keeping idle, but was pursuing remedy through alternative source by filing rectification petition in order to redress its grievance. The Ld A.R further submitted that, after the receipt of

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order against second rectification petition, the assessee was seeking professional advice and by that time Pandemic has started. Hence there was delay in filing appeal before Ld CIT(A). Accordingly, she submitted that there was reasonable cause for the assessee in not filing the appeal against order 143(1) intimation before Ld. CIT(A) in time and the Ld CIT(A) was not justified in not condoning the delay.

4. I heard Ld. D.R. on this issue and perused the record. From the narration of the events mentioned in the preceding paragraph, it can be noticed that the assessee was pursuing alternative remedy by way of filing rectification petition before CPC. Only when the second rectification petition filed by the assessee was rejected, it has been advised by its consultant to file appeal against intimation issued u/s 143(1) of the Act before Ld. CIT(A). As submitted by the Ld. A.R., in the intervening period, the pandemic has started disrupting the entire Nation and lock down was also announced. After opening of the nation, the assessee has filed the appeal before Ld. CIT(A) on 8.8.2020. In view of the foregoing, I am of the view that there was reasonable cause for the assessee in not filing the appeal before Ld. CIT(A) within the limitation period. Accordingly, I am of the view that Ld. CIT(A) was not justified in not condoning the delay in filing appeal before him. Accordingly, I condone the delay of 511 days in filing appeal before Ld. CIT(A) against the intimation received u/s 143(1) of the Act.

5. I have noticed earlier that the Ld. CIT(A) has not adjudicated the issues on merit, since he did not admit the appeal. Since I have condoned the delay, I admit it proper to restore all the issues to his file for adjudicating them. Accordingly, I set aside the order dated 23.8.2021 passed by Ld. CIT(A) against the appeal filed challenging the intimation issued u/s 143(1) of the Act and restore all the

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issues to his file for adjudicating them after affording adequate opportunity of being heard to the assessee.

6. The next appeal numbered as ITA 579/Bang/2021 has been filed by the assessee against the rectification order passed by CPC, wherein identical issues as that of the earlier appeal have been urged. This appeal was also dismissed by Ld CIT(A) in limine without condoning the delay in filing the appeal. Since I have restored the appeal filed by the assessee against the intimation u/s 143(1) of the Act to the file of Ld. CIT(A) by condoning the delay, the adjudication of the same would take care of the issues urged in this appeal filed against the order passed u/s 154 of the Act. Hence, in effect, this effect shall become infructuous. According I dismiss the same.

7. In the result, the appeal No.ITA 580/Bang/2021 is treated as allowed and other appeal is dismissed.

Order pronounced in the open court on 17th Feb, 2022

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

Bangalore,
Dated 17th Feb, 2022.
VG/SPS

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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.**