

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

Appeal No. and Assessment Year	APPELLANT	RESPONDENT
ITA No. 478/Bang/2017 2010-11	Shri. Madhu Kumar Varma, S/o. V. Subba Raju, Near Peddaraju Camp, Yanignur Hobli Ramachandrapuram Camp Kemppli, Hospet Taluk Bellary Dist. <b>PAN : AGEPV 3217 E</b>	The Deputy Commissioner of Income-tax, Central Circle 1(3), Bengaluru.
ITA No. 919/Bang/2017 2009-10	Shri. K. Mehruz Ali Khan, 2 <sup>nd</sup> Floor, Door No. 231, Ward No. 22, 6 <sup>th</sup> Cross, M. V. Nagar Kappagal Road, Bellary – 583104. <b>PAN : ANNPM 3470 G</b>	-do-
ITA No. 920/Bang/2017 2009-10	-do-	-do-
ITA No. 921/Bang/2017 2010-11	-do-	-do-
ITA No. 922/Bang/2017 2011-12	-do-	-do-
ITA No. 923/Bang/2017 2011-12	-do-	-do-
ITA No. 494/Bang/2017 2010-11	-do-	-do-
ITA No. 954/Bang/2017 2010-11	-do-	-do-

Assessee by	:	Shri. Lakshmi Narayanan, Advocate
Revenue by	:	Shri. K. V. Arvind, Sr. Standing Counsel for Department.

Date of hearing	:	03.10.2018
Date of Pronouncement	:	16.10.2018

## **ORDER**

***Per Sunil Kumar Yadav, Judicial Member***

These appeals are preferred by the assessee against the order of the CIT(A). Since all these appeals were heard together, for the sake of convenience, they are being disposed off through this consolidated order.

2. There are three sets of appeals. One is filed by Shri Madhu Kumar Varma for the assessment year 2010-11 against the order of the CIT(A) on merit besides raising ground for not condoning the delay in filing of the appeal by the CIT(A). The other set of appeal is filed by Shri. Mehfuz Ali Khan for the assessment year 2009-10, 2010-11, 2011-12 against the order of the CIT(A) on merit besides raising a ground that CIT(A) has not condoned the delay in filing the appeal and dismissed the appeal being barred by limitation. The third set of appeal is filed by Shri. Mehfuz Ali Khan, being a partner of M/s. Devi Enterprises against the order of CIT(A) for the assessment year 2010-11 on merit besides raising a ground for not condoning the delay in filing of the appeal by the CIT(A). The fourth set of appeal is filed by Shri. Mehfuz Ali Khan against the order of the CIT(A) confirming the penalty levied under section 271(1)(c) of the Act against the assessee after dismissing the appeal besides raising a plea that delay was not condoned in filing of the appeal by the CIT(A).

3. On perusal of record and the order of the CIT(A), we find that in all these appeals, the CIT(A) has dismissed the appeal being barred by limitation. While dismissing the appeal, the CIT(A) has made the observation that delay in filing of the appeal was not duly explained. Therefore, he did not condone the delay in

filing of the appeal. The CIT(A) has not given any finding on merit in any of the case. Therefore, the solitary issue before us is whether there were sufficient ground/ reasons for condoning the delay before the CIT(A).

4. Though the learned Counsel for the assessee has emphatically argued that in the hands of the assessee, the AO has made an addition on protective basis and substantive addition made in the case of G. Janardhan Reddy and in the case of G. Janardhan Reddy, the substantive addition was deleted by the Tribunal by knocking down the assessment framed. Once the substantive addition has been deleted, the protective addition cannot be sustained in the hands of the assessee as there was no concrete material available against them. In response thereto, the learned Standing Counsel strongly contended that after quashing the assessment order by the Tribunal, the Revenue has invoked the provisions of section 147 of the Act and framed the assessment in the hands of G. Janardhan Reddy against which an appeal was filed before the CIT(A) and the same is pending for adjudication. The learned Counsel for the assessee further contended that in such circumstances, when the assessee has invoked the provisions of section 147 of the Act in framing the assessment on the same issue in the hands of G. Janardhan Reddy, the addition in the hands of the assessee on protective basis are not sustainable.

5. During the course of hearing, we objected this argument as there is no finding of the CIT(A) on merit. The CIT(A) has dismissed the appeal of the assessee being barred by limitation having noted that there is no sufficient reasons for condoning the delay. Therefore, the respective counsels were asked to advance their argument on the point whether the delay in filing of the appeal before the CIT(A) can be condoned. In this regard, the learned Counsel for the

assessee has invited our attention in the case of Mehfuz Ali Khan with the submission that at the time of completion of assessment, Mehfuz Ali Khan was in jail in the case charged by CBI and he remained in jail from 05.10.2012 to 30.01.2015 when he was released on bail by the Principal of Special Bench, Hyderabad. In support of his contention, he has placed the order of the Principal Judge for CBI cases, Hyderabad and the retention certificate. It was further contended that the assessment order was served upon the assessee when he was in Central Jail in Bangalore and he accordingly sent the assessment order to his father Shri. K. Iqbal Ali Khan at Bellary with the instruction that order should be contested in appeals after taking a legal opinion. But unfortunately, it was handed over to his mother and it could not be passed to his father in time for taking necessary action. When he was about to release from the Jail, he verified about the filing the appeal from Jail and it was brought to his notice that appeal was not filed and he accordingly instructed for filing of appeal and accordingly appeal was filed on 29.01.2015 just before his release from his jail on 30.01.2015. The learned Counsel for the assessee further contended since there was genuine difficulty in filing the appeal before the CIT(A), the delay in filing of the appeal should be condoned but the CIT(A) did not do so and dismissed the appeal being barred by limitation without dealing the issue on merit.

6. The learned Counsel for the assessee further contended that since there is reasonable cause for the delay in filing of the appeals, the delay should be condoned and the order of the CIT(A) be set aside and matter be restored to his file for adjudication of the appeals on merit after affording opportunity of being heard to the assessee. In support of his contentions, he has placed reliance upon the judgments of the Apex Court in the case of Ummer Vs. Pottengal Subhida in

civil appeal No. 2599-2600/2018 in which the Hon'ble Apex Court has condoned the delay of 554 days in filing the appeal having convinced with the reasons for the delay in filing of the appeal.

7. He further placed reliance upon the other judgments of the Apex Court in the case of Vedabai Vs. Shantaram Baburao Patil and Ors. (2001) 9 SCC 106 in which the Apex Court has condoned the delay of substantial days.

8. In the case of Madhu Kumar Varma, the learned Counsel for the assessee has invited our attention that the assessee was never served with the copy of the assessment order. After the assessment order was passed, he was served recovery notice by the TRO, Central Circle, Bengaluru and was also advised that there could not be any demand unless the assessments are completed and the assessment order is served upon the appellant along with the demand notice. It was further contended that in the month of December 2014, the TRO insisted that appellant should furnish proof of filing of appeals before the CIT(A) so as to seek time to pay the demand raised by the department. The learned Counsel for the assessee further contended that since in the instant case the assessment was framed in protective basis, there cannot be any demand against the assessee unless the protective is converted into substantive. In any case, after receipt of the recovery notice the assessee has approached the AO to supply the certified copy of the orders and later on the AO vide its letter dated 02.01.2015 supplied the copy of the assessment order and demand notice. On receipt of the assessment order and the demand notice, the assessee has filed the appeals before the CIT(A) on 23.01.2015. The learned Counsel or the assessee has contended that since the limitation for filing the appeal starts from the receipt of the assessment order and the assessment order is received in January 2015, the appeal

was filed in time before the CIT(A). The CIT(A) treated the appeal to be barred by limitation and dismissed the appeal having not admitted.

9. The learned Standing Counsel strongly objected to the arguments advanced by the learned Counsel for the assessee with the submissions that before the CIT(A), assessee neither filed any affidavit in support of his contentions nor filed any evidences to explain the delay in filing of the appeal. Therefore, delay in filing of the appeal before the CT(A) should not be condoned. Atmost the Tribunal if convinced with the contentions of the assessee, the matter may be sent back to the CIT(A) to decide the application for condonation of delay on the baiss of the evidence and the affidavit filed by the assessee.

10. The learned DR further contended that even before the Tribunal, assessee has not filed the evidences in support of his contentions. Therefore, the assessee's argument cannot be appreciated.

11. Having carefully examined the order of authorities below in the light of rival submissions, we find that undisputedly, the CIT(A) did not condone the delay in any of the appeals and dismissed the appeals being barred by limitation. The delay in all these appeals is approximately 20 months which was not condoned by the CIT(A). After the conclusion of the hearing, the assessee has filed the relevant evidences in support of his contention and we have carefully perused the evidences placed on record. In the case of Muzafar Ali Khan and its partner step concern Devi Enterprises, the assessee has placed the order of the Principal Judge of the CBI and retention certificate in order to demonstrate that assessee was in jail from 05.10.2012 to 30.01.2015. Since the assessee was in jail at the time when the assessment order was passed and the appeal was filed

before the CIT(A), the contentions of the assessee cannot be outrightly rejected. The assessee's contentions that on receipt of the assessment order in jail, he as instructed it to be delivered to his father Shri. K. Iqbal Ali Khan at Bellary to contest the appeals after taking a legal opinion but unfortunately it was delivered to his mother and it could not be passed on to his father within time for taking necessary action. It is also undisputed fact that assessee was released from Jail on 30.01.2015. Since the assessee was in Jail at the time of completion of the assessment and filing of the appeal, a lenient view should be taken. We have also carefully examined the judgments of the Apex Court in the case of Ummer Vs. Pottengal Subhida (supra) in which the Apex Court has condoned the delay of 554 days having convinced with the explanations of the delay in filing of the appeal. Relevant observation is extracted hereunder for the sake of reference:

*"7. In the light of the aforementioned undisputed facts, in our opinion, the High Court should have taken liberal view in the matter and held the cause shown by the appellant as "su went cause" within the meaning of Section 5 of the Limitation Act and accordingly should have condoned the delay in filing the appeal.*

*18. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law. 19. In our considered opinion, having regard to the totality of the facts and circumstances of the case and the cause shown by the appellant, which is duly proved by the documents, we are inclined to hold that the cause shown by the appellant for condoning the delay in filing the appeal before the High Court was/ is a sufficient cause within the meaning of Section 5 of the Limitation Act and, therefore, the application filed by the appellant for condonation of delay of 554 days in filing the appeal deserves to be condoned. It is accordingly*

*condoned but it is subject to the condition that the appellant shall pay cost of Rs.10,000 / - to respondent No. 1 .”*

12. The Supreme Court has also observed in the case of Vedabai Vs. Shantaram Baburao Patil and Ors. (supra) that court has to exercise its discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause”, the principle of advancing substantial justice is of prime importance. The relevant portion is extracted hereunder for the sake of reference:

*"5. In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard-and-fast rule can be laid down in this regard. The court has to exercise the discretion on the facts of each case keeping in mind that in construing expression "sufficient cause", the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Additional District Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the Limitation Act is exercised by the Additional District Judge in contravention of the law laid down by this Court, that the expression "u went cause" should receive liberal construction, in a catena of decisions (see State of I.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366] and Sandhya Rani Sarkar v. Sudha Rani Debi [(1978) 2 SCC 116] ). The High Court in exercising its jurisdiction under Section 115 CPC failed to correct the jurisdictional error of the appellate court."*

13. In the light of legal proposition laid down by the Apex Court, if we examine the fact of the case, we find that there is reasonable cause for the delay in filing of the appeal before the CIT(A) as he was in jail at the relevant point of time. Therefore, we are of the view that in order to advance substantial justice,

the delay in filing of appeal before the CIT(A) should be condoned and we accordingly condone the delay in filing of appeal before the CIT(A) and direct him to adjudicate the appeal on merit after affording opportunity of being heard to the assessee.

14. Similarly, in the case of Madhu Kumar Varma, the assessee has filed the copy of letter addressed to the AO for supply of the certified copies of the assessment order passed under section 153A of the Act and the letter written by the AO to the assessee through which certified copy of assessment order and demand notice was served. The letter was written to the AO on 24.12.2015 in which the assessee has specifically said that assessment order was not served upon the assessee and the TRO is pressing hard for the payment of the tax. These facts were not disputed by the AO and he issued a certified copy of the assessment order vide letter dated 02 01 2015 and consequently the appeal was filed on 23.01.2015. In the light of these documentary evidences, we cannot outrightly reject the contentions of the assessee that the assessment order was never served upon the assessee and on the demand raised by the TRO, assessee approached the AO for certified copies and after receipt, he filed the appeal before the CIT(A). In the light of these facts, we are of the view that in this case also, there is reasonable cause for the delay in the filing of the appeal in the light of the judgments of the Apex Court referred herein above. We therefore condone the delay in filing of the appeals before the CIT(A) and restore the matter to his file with a direction to readjudicate the appeal on merit after affording opportunity of being heard to the assessee.

15. In the case of appeals filed by Mehfuz Ali Khan against the order of the CIT(A) confirming the penalty order, the facts are almost similar. Therefore, the

order of the CIT(A) is set aside as the delay in filing of appeals has been condoned by us in foregoing paras and matter is restored to the file of CIT(A) in all these appeals for adjudication of the appeals on merit after affording opportunity of being heard to the assessee.

16. In the result, appeals of the assessee are allowed for statistical purposes.

*Pronounced in the open court on this 16<sup>th</sup> day of October, 2018.*

Sd/-  
(A. K. GARODIA)  
Accountant Member

Sd/-  
(SUNIL KUMAR YADAV)  
Judicial Member

Bangalore.

Date: 16<sup>th</sup> October, 2018.

/NS/

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|---------------|----------------|---------------|
| 1. Appellants | 2. Respondents | 3. CIT        |
| 4. CIT(A)     | 5. DR          | 6. Guard File |

By Order

Assistant Registrar  
ITAT, Bangalore