

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT**

<b>ITA No.351/Bang/2021</b>
<b>Assessment Year : 2017-18</b>

Ganeshan Manimaran, No.405, Elegantsplendor 102 1 <sup>st</sup> Floor, 7 <sup>th</sup> Main, HRBR Layout, 1 <sup>st</sup> Block, Kalyanagar, Bengaluru – 560 043. <b>PAN : ACXPM 9353 R</b>	Vs.	ITO, Ward – 1(2)(2), Bengaluru.
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Assessee by	:	Shri. Sanjay B Chikkamath, CA
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel for the Department

Date of hearing	:	09.12.2021
Date of Pronouncement	:	13.12.2021

**ORDER**

This is an appeal filed by the assessee against order dated 12.05.2021 of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, relating to Assessment Year 2017-18.

2. The assessee is an individual. He filed return of income for Assessment Year 2017-18 declaring a total income of Rs.11,54,750/-. The assessee had deposited cash in 2 bank accounts maintained by him in Canara Bank, Cox Town, Bengaluru, totaling a sum of Rs.30,30,318/-. The assessee was called upon to explain the source of funds out of which the aforesaid cash deposits were made especially during the demonetization period. Since there was no response from the assessee, the CIT(A) added a sum of Rs.30,30,318/- as unexplained cash deposits under section 68 of the Act and computed tax liability as per the provisions of section 115BBE of the Income Tax Act, 1961 (hereinafter called ‘the Act’).

3. Aggrieved by the aforesaid order dated 05.12.2019, the assessee filed appeal before the CIT(A). There was a delay of about 58 days. The reasons for filing the appeal belatedly was given by the assessee as follows:

*"The reason for delay was that the tax consultant assured me for filing the appeal in time but he could not do it. On receipt of payment of demand notice by A.O. dated 23-01-2020, I appeared before A.O. to know the consequence thereof. But A.O. directed me to file an appeal against the said order and get the stay after payment of 20 percent of demand. On advice of A.O. I approached C R Nulvi CA on 06-02-2020 and I come to know that he was out of country. Only after his arrival I am preferring this appeal on 02-03-2020 the delay was beyond my control and not intentional, laxity or negligent on my part. Herewith I attached affidavit duly notarized."*

4. CIT(A) did not accept the plea of the assessee on the ground that the Chartered Accountant who assured the assessee that he would file the appeal did not file affidavit to support the claim of the assessee. Following were the relevant observations of the CIT(A):

*"9.2 It is admitted fact that the appellant has filed affidavit stating there in that it is due to CA as he assured the appellant but did not filed the appeal. However there was no affidavit of concerned CA has been filed that for filing appeal the appellant has instructed him but due to any reasonable cause the CA could not able to file the appeal. Therefore claim of the appellant cannot be accepted only on the basis of self sworn statement. Therefore, it is held that appellant had not able to justify that there was sufficient cause for delay in filing of the appeal. Under the circumstances that the appellant did not comply with the provisions of Sec. 249 pertaining to the procedure for filing of an appeal, the appeal filed on 02-03-2020 is held to be not maintainable."*

5. Aggrieved by the order of the CIT(A) refusing to condone the delay in filing the appeal, the assessee is before the Tribunal in the present appeal.

6. I have heard the rival submissions. It is clear from the order of the CIT(A) that he has accepted the affidavit of the assessee wherein the assessee has confirmed that erstwhile Chartered Accountant assured that he will file the appeal against the Order of Assessment within the time but did not do so. This fact by itself is sufficient to condone the delay in filing the appeal. The CIT(A) cannot insist on the Chartered Accountant to give reasons why he did not file the appeal as instructed by the assessee. In other words, the reasons assigned for not condoning the delay are purely technical and I am of the view that the technicalities should not stand in the way of substantive justice and prevent the assessee being heard on merits of the grievances projected against the Order of Assessment before the CIT(A). I therefore condone the delay in filing the appeal by the Assessee before CIT(A) and direct the CIT(A) to decide the appeal of the Assessee on merits after affording Assessee opportunity of being heard.

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

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-

**(N. V. VASUDEVAN)**  
**Vice President**

Bangalore.  
Dated: 13.12.2021.  
/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.