

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.210/Bang/2022 : Asst.Year 2017-2018

M/s.Modus Information Systems Private Limited, 55 Shirdi Saibaba Temple Road, Bangalore North Bengaluru - 560 008. PAN : AAECM3231A.	v.	The Assistant Director of Income-tax, CPC, Bangalore
(Appellant)		(Respondent)

Appellant by : ---- None ----

Respondent by : Smt.S.Praveena, CIT-DR

Date of Hearing : 25.05.2022	Date of Pronouncement : 25.05.2022
-------------------------------------	---

ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 23.11.2021. The order of the CIT(A) arises out of the order passed u/s 154 r.w.s. 143(1) of the I.T.Act, dated 28.06.2019. The relevant assessment year is 2017-2018.

2. The brief facts of the case are as follows:

For the assessment year 2017-2018, the return of income was filed on 21.10.2017. The return was processed u/s 143(1) of the I.T.Act by making following additions to the returned income:-

Sl. No.	Particulars	Amount (Rs.)
1.	Income declared in the return	1,60,78,870
2.	Add : Dividend received from Indian company	5,39,501
3.	Add : Addition u/s 36(1)(va)	3,50,127
	Total	1,69,68,498

3. The assessee filed online reply on 11.06.2019 requesting for rectification u/s 154 of the I.T.Act. The CPC partly accepted the correction proposed by the assessee by reducing the dividend income of Rs.5,39,501. However, the CPC did not reduce the addition made u/s 36(1)(va) amounting to Rs.3,50,127.

4. Aggrieved by the order passed u/s 154 of the I.T.Act, the assessee preferred an appeal before the first appellate authority. The CIT(A) dismissed the appeal on the ground that there was a delay in filing the appeal before him and no petition for condonation of delay was filed. The relevant finding of the CIT(A) reads as follow:-

“2. The appeal was filed on 20.03.2020. But, as mentioned above, the order u/s 154 was made by CPC, Bangalore on 28.06.2019 (appellant had filed rectification application on 11.06.2019). But the appellant has claimed that order u/s 154, dated 28.,06.2019, was received by it on 21.02.2020, through email. The appellant has not acknowledged delay in filing the appeal nor has it demonstrated, by any evidence, that the order dated 28.06.2019 was not delivered to it, in any manner, before 21.02.2020, i.e. it was not available in the then registered e-mail id of the appellant and it was also not available in the Registered Account of the appellant on the income tax portal, immediately after 28.06.2019.

3. The appellant has simply not accepted any kind of delay in filing the appeal. This is quite contrary to the general trend that CPC Bangalore’s communications are available in the account of a tax payer immediately after they are issued / generated. In the e-mail of a tax payer also they are available within a day or two after their generation / issuance. In this case, the appellant has not supported its claim, by any evidence, that the order was indeed served for the first time on 21.02.2020.”

5. Aggrieved, the assessee has filed the present appeal before the ITAT. It is stated in the statement of facts filed before the Tribunal that the assessee was unaware of the

order passed u/s 154 of the I.T.Act until it received the same in email on 21.02.2021. It is stated that on account of this, the assessee failed to file appeal before the CIT(A) within 30 days from the date of order (154 order dated 28.06.2019). Consequently the appeal was filed only on 20.03.2020, since the assessee was under the bonafide belief that it had 30 days from the date of receipt of the order to file the appeal and therefore, no petition for condonation of delay was filed.

6. The learned Departmental Representative supported the order of the CIT(A).

7. We have heard learned DR and perused the material on record. The lack of petition for condonation of delay cannot be held fatal unless the assessee was granted an opportunity to cure the defect. Therefore, we restore the issue to the CIT(A) and if the CIT(A) is of the opinion that there is a delay in filing the appeal, he shall give an opportunity to the assessee to cure the defect and consider the delay petition if filed by the assessee. The CIT(A) shall take a decision in accordance with law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 25th day of May, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 25th May, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Bangalore.
4. The Pr.CIT, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore