

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.63/Bang/2022
Assessment Year: 2015-16

M/s. Malnad Organics Pvt. Ltd. 325/1, 14 th Main, 5 th Cross RMV Extension, Sadashivanagar Bangalore 560 080 PAN NO : AAFCM7541J	Vs.	ITO Ward-4(1)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha, A.R.
Respondent by	:	Smt. Priyadarshini Baseganni, D.R.

Date of Hearing	:	07.07.2022
Date of Pronouncement	:	07.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against the order of CIT(A) dated 4.2.2019. The assessee has raised following grounds of appeal:-

1. *“The CIT (A) erred in passing the order in the manner he did*
2. *On the facts and in the circumstances of the case, the order passed by the learned CIT(A) is opposed to law and to the principles of natural justice and thus the impugned ex-parte order is liable to be set aside.*

3. *The Ld. CIT(A) ought to have in the interest of justice given an opportunity to the Appellant to furnish the details by issuing a fresh notice since all the details called for were available with the Appellant and could have furnished the same to satisfy the genuineness of the claim as mentioned in the P&L Account.*
4. *The Ld. CIT(A) ought to have appreciated that the Appellant maintained books of account and all the details have been recorded in the P&L Account furnished along with the return would fully support the claim and the impugned disallowance accordingly was totally uncalled for.*
5. *The Ld. CIT(A) ought to have appreciated that even if the details called for were not available to him, the addition/disallowance confirmed of the agricultural income is opposed to law and in the ex-party order he ought to have made a fair estimate by comparing the past performance of the Appellant and thus the order passed is opposed to law and the impugned additions/disallowance are liable to be deleted.*
6. *The Ld. CIT(A) ought to have allowed the claim of the Appellant and ought not to have confirmed the addition /disallowance of Rs. 1,73,35,079/- u/s 68 of the Act which is bad in law since the Appellant is having all the supporting documents which could have been produced had there been a reasonable opportunity provided to the Appellant.*
7. *The learned CIT(A) erred in confirming the levy interest under Sections 234B of the Act of Rs. 17,91,801/-.*
8. *Without prejudice, the disallowances as confirmed by the learned CIT (A) are arbitrary, excessive and ought to be reduced substantially*
9. *For these and such other grounds that may be urged at the time of hearing the Appellant prays that the appeal may be allowed.”*

2. Facts of the case are that the assessee company has declared agricultural income of Rs.31,80,626/- and claimed exemption u/s. 10(1) of the Income-tax Act,1961 [the Act' for short] and it has declared loss of Rs.5,70,190/- under the head business/profession. The assessee company was requested to furnish details of area and quantity of crop grown and details of expenses incurred evidences for sale of agricultural crops etc. The assessee company claimed that it has taken on lease agricultural land with effect from 01/04/2014 owned by Smt. Ramya G.C about 25.39 acres situated in the village Konaykanahalli village, Madihalli Hobli, Belur Taluk, Hassan District, as per the lease agreement dt. 01.04.2014. Further, it is claimed that in the earlier years the company was carrying on agricultural activity in the land owned by Shri Ramesh B Gowda about 25.19 acres situated in Anaajor Village, Gonibeedu Hobli, Mudigere Taluk, Chikkamagulu district under the lease deed dt. 02.04.2010 and this lease has expired on 31.03.2014. It is claimed that during the year the assessee company has grown banana and entire agricultural receipts are from sale banana. During the year the assessee company has accounted sale of agricultural produce at Rs.1,73,05,271/- and debited expenses of Rs.1,41,24,646/- and declared net agricultural income of Rs.31,90,626/-.

3. On appeal, Ld. CIT(A) confirmed the addition by ex-parte order. Against this assessee is in appeal before us by way of above grounds.

2. However, we notice that there was delay of 1028 days in filing the appeal before this Tribunal. The assessee filed a condonation petition which reads as follows:-

INDIA NON JUDICIAL AR
7/7/2022

Government of Karnataka

Rs. 20

e-Stamp

Certificate No.	: IN-KA24724592863673U
Certificate Issued Date	: 23-May-2022 02:35 PM
Account Reference	: NONACC (FI)/ kacrsf108/ MALLESHWARAM6/ KA-BA
Unique Doc. Reference	: SUBIN-KAKACRSFL0876129348050726U
Purchased by	: RAMESH B GOWDA
Description of Document	: Article 4 Affidavit
Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: RAMESH B GOWDA
Second Party	: NA
Stamp Duty Paid By	: RAMESH B GOWDA
Stamp Duty Amount(Rs.)	: 20 (Twenty only)

सत्यमेव जयते

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BEFORE THE INCOME TAX APPELLATE TRIBUNAL

AFFIDAVIT

I, Ramesh B Gowda S/O Bomme Gowda, aged about 49 years, residing at #325, 14th Main, 5th Cross, RMV Extension, Sadashivnagar, Bangalore - 560 080, do hereby solemnly affirm and state as under:

Ramesh B Gowda

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

No OF CORRECTIONS ~

NOTARY
K.P. RAMESH
REG. NO. 5507
EXPIRY DATE: 12/03/2023
Basaveshwaram
GOVT. OF INDIA

1. I am the Director of M/s. Malnad Organics Pvt Ltd, I state that the Appellant is in the status of company and engaged in the business of agricultural activities. The Appellant has agricultural land situated in areas of Gorur Village, Belur and Hassan. The agricultural land on which the agricultural produce is cultivated and grown belongs to the directors of the company (being the Appellant). The Appellant engages in agricultural activities with open field cultivation using Mulch Sheets. The Appellant grows ginger and bananas on the agricultural land and sells the agricultural produce in the domestic markets. There was search in the business premises of the Appellant, on 04.12.2020 materials were seized from the premises of the Appellant and the Appellant was unable to collate all the details as there were insufficient staff to maintain the records properly and the order received from CIT (A) was misplaced. The director of the company was not known about the said ex-party order received.
 2. I state that immediately thereafter, I had to go leave town to my native for personal reasons. After I reached my native I feel ill. I state that I was suffering from high Fever and was advised bed rest. Therefore, I could not meet my Advocate and hand over the relevant papers pertaining to the above case to prepare and file the above said appeal. However, my Advocate requested me to give him documents in order to prepare and file the appeal. I once again fell sick due to travel from my native to Bangalore. After relevant tests, it was found out that I was suffering from respiratory disorder and I was unable to breathe properly for which I was once again advised bed rest. Therefore, I could not contact my Advocate and hand over all the papers.
 3. After recovering from my illness, I was unable to contact my Advocate and provide him necessary details and documents to prepare this appeal. Non filing of the above appeal in time are unintentional and are for the bonafide reasons stated above. I have good case on merits which will otherwise be defeated in case the delay in filing the above appeal is not condoned.
 4. The Appellant has a good cause on merits and accordingly prays that the delay in filing the appeal may kindly condoned and appeal may kindly be admitted and disposed of in the interest of justice and equity.
- I solemnly declare that whatever stated above is to the best of my knowledge and information obtained by me.

2.1 Accordingly, the Ld. AR pleaded that the delay may be condoned and the appeal may be admitted.

3. The Ld. D.R. strongly opposed the admission of appeal since there is inordinate delay of 1028 days in filing the appeal before this Tribunal. More so, the assessee has not participated before the Ld. CIT(A) and assessee is not having any merit in its appeal and may be dismissed in limine.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, there was delay of 1028 days in filing the appeal before this Tribunal. According to the assessee, the order was communicated to the assessee on 4.2.2019. The assessee required to file appeal on or before 5.4.2019. However, the appeal has been filed before Tribunal on 27.1.2022. Now the delay could be classified into two types. One is pre-Covid period and another one is post-Covid period i.e. the delay up to 31.3.2020 and the delay after 31.3.2020. In our opinion, the assessee has to explain the delay up to 31.3.2020. Thus, assessee has to explain the delay from 5.4.2019 to 31.3.2020 i.e. the assessee has to explain the delay of 360 days. Now the contention of the Ld. A.R. is that the ex-parte order passed by the Ld. CIT(A) has been misplaced in the office in the hands of the assessee and the reason that there was search in premises of assessee on 4.12.2020 and there was insufficient staff working with the assessee and it took time to locate the order and to file appeal before this Tribunal. It was also mentioned in the appeal that assessee has to go to native place for personal works after going to the native place, assessee fell sick and in view of this assessee was not able to take necessary steps to file appeal before this Tribunal. As the assessee was failed to contact the suitable advocates for advice. It was submitted that the delay was unintentional and bonafide. We have gone through the affidavit filed by the assessee.

In our opinion, the assessee not at all explained the delay in filing the appeal with sufficient reasons. The assessee though stated in his affidavit that it was misplaced in its hand and not mentioned the date it has actually been received by assessee and who is handling this case. Further, it was stated that assessee was sick during the period. However, there was no evidence in the form of medical certificate to prove the sickness of the assessee, the affidavit filed by the assessee is too general in specifying the valid reasons for which no credits could be given and this is only self-serving document. Further, in this case, there was inordinate delay in filing this appeal before this Tribunal. A distinction must be made between a case where the delay is inordinate and a case where the delay is of few days, whereas in the normal case, the consideration of prejudice to the other side will be a relevant factor, so the case calls for a more conscious approach, in the later case, no such consideration may arise and such a case deserve a liberal approach. No hard and fast rule can be laid down in this regard. The court has to exercise the distinction on the facts of each case, keeping in mind that in considering the expression "sufficient cause", the principle of advancing substantial justice is of prime importance.

4.1 The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum: *vigilantibus non dormientibus jura subveniunt*.

4.2 The delay cannot be condoned simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence, whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party

invoking the aid of the provisions. The cause for the delay in filing the appeal, which by due care and attention, could have been avoided, cannot be a sufficient cause within the meaning of the limitation provision where no negligence, or inaction, or want of bona fides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.

4.3 In the present case, the assessee explained the delay in its affidavit in a very general and casual manner without explaining any supporting documents to establish assessee's case. It was only stated in his affidavit that Ld. CIT(A)'s order was misplaced, thereafter steps were taken for the preparation of appeal, consequently, delay was caused. This clearly shows that the delay was due to the negligence and inaction on the part of assessee. Assessee could have very well awarded the delay by exercise of due care and responsibility. In our opinion, there exists no sufficient and good reason for the delay of such inordinate delay as pointed out in the earlier part of this order. Accordingly, delay is not condoned. The delay is unadmitted and hence, the appeal is dismissed in limine.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 7th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th Jul, 2022.
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.**