

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-‘C’ BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 117/Bang/2023</b>
<b>Assessment Year : 2012-13</b>

Shri Narayan Lal, Prop. M/s. Mahalaxmi Super Market, No. 1, 6 <sup>th</sup> Cross, Maruthi Nagar, Vrushabhavathi Nagar, Bangalore – 560 079. <b>PAN: AFAPN1506K</b>	<b>Vs.</b>	The Income Tax Officer, Ward -1(2)(3), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Nithin .S, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate- Standing Counsel for Revenue

Date of Hearing	:	25-04-2023
Date of Pronouncement	:	25-04-2023

**ORDER**

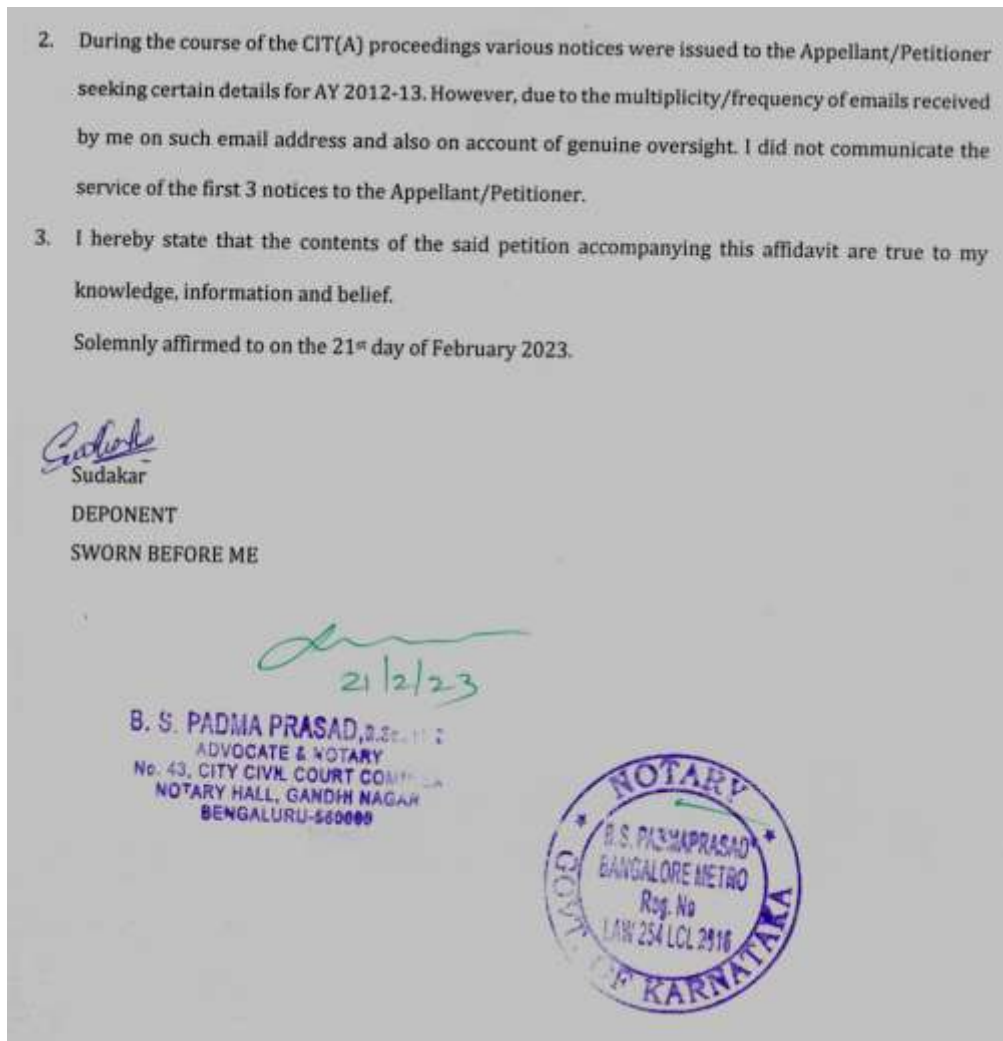
**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against the order dated 27.12.2022 passed by NFAC, Delhi for A.Y. 2012-13.

2. At the outset, the Ld.AR submitted that the assessment order has been passed u/s. 144 of the act by making an addition u/s. 69A amounting to Rs.11,04,300/-. The Ld.AR submitted that the notices were received by the accountant of the assessee. However the same was not communicated in order to take necessary steps of filing relevant documents/appeal.

3. An affidavit of the accountant Shri Sudakar has been filed before this *Tribunal* in support of this contention. For the sake of convenience, the same is scanned and reproduced hereinbelow.

	<b>INDIA NON JUDICIAL</b>	
सत्यमेव जयते	<b>Government of Karnataka</b>	Rs. 20
<b>e-Stamp</b>		
<b>Certificate No.</b>	: IN-KA89330304924418V	
<b>Certificate Issued Date</b>	: 21-Feb-2023 03:12 PM	
<b>Account Reference</b>	: NONACC (FI)/ kaksfcl08/ BANGALORE6/ KA-RJ	
<b>Unique Doc. Reference</b>	: SUBIN-KAKAKSFCL0868275178959546V	
<b>Purchased by</b>	: SUDAKAR	
<b>Description of Document</b>	: Article 4 Affidavit	
<b>Description</b>	: AFFIDAVIT	
<b>Consideration Price (Rs.)</b>	: 0 (Zero)	
<b>First Party</b>	: SUDAKAR	
<b>Second Party</b>	: NA	
<b>Stamp Duty Paid By</b>	: SUDAKAR	
<b>Stamp Duty Amount(Rs.)</b>	: 20 (Twenty only)	
 		
Please write or type below this line		
<b>AFFIDAVIT</b>		
<p>I, Sudakar S/o Puttamalliah aged about 26 years, here after referred to as Accountant, am conversant with the facts and circumstances of this case and do hereby solemnly affirm and state as follows:</p>		
<p>1. For the year under consideration, I was appointed by the Appellant/Petitioner to manage/assist him with the e-filing and other online compliances as he was not conversant with operating computer systems:</p>		
<p style="text-align: right;"></p>		
<p>1. The authenticity of this Stamp certificate should be verified at 'www.shilestamp.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.</p> <p>2. The onus of checking the legitimacy is on the users of the certificate.</p> <p>3. In case of any discrepancy please inform the Competent Authority.</p>		
		31



4. He submitted that, the assessment order therefore was passed without being represented by the assessee.

Aggrieved by the assessment order, assessee filed appeal before the Ld.CIT(A).

5. Again the same mistake crept in, and the accountant received the notices of hearing through email. The assessee has filed an affidavit stating that assessee's email was also provided however the last four notices of hearing issued by the Ld.CIT(A) to assessee's personal email id was missed by the assessee due to his lack of technical knowledge of handling emails.

6. Annexed herewith the affidavit of assessee in support of this contention.

		<b>INDIA NON JUDICIAL</b>
सत्यमेव जयते		<b>Government of Karnataka</b>
		Rs. 20
<b>e-Stamp</b>		
<b>Certificate No.</b>	:	IN-KA89330967993632V
<b>Certificate Issued Date</b>	:	21-Feb-2023 03:12 PM
<b>Account Reference</b>	:	NONACC (FI)/ kaksfcl08/ BANGALORE6/ KA-RJ
<b>Unique Doc. Reference</b>	:	SUBIN-KAKAKSFCL0868277506143741V
<b>Purchased by</b>	:	NARAYANLAL
<b>Description of Document</b>	:	Article 4 Affidavit
<b>Description</b>	:	AFFIDAVIT
<b>Consideration Price (Rs.)</b>	:	0 (Zero)
<b>First Party</b>	:	NARAYANLAL
<b>Second Party</b>	:	NA
<b>Stamp Duty Paid By</b>	:	NARAYANLAL
<b>Stamp Duty Amount(Rs.)</b>	:	20 (Twenty only)

  
 AUTHORIZED SIGNATORY  
 UNIVERSAL CREDIT CO. (INDIA) PRIVATE LIMITED




Please write or type below this line

**AFFIDAVIT**

I, Narayan Lal S/o. Shri. Laxman Ram, aged about 39 years, being proprietor of M/s  
**Mahalakshmi Super Market**, No. 1, 6th Cross, Maruthi Nagar, Vrushabhavathi Nagar  
 Bangalore-560079 (here after referred to as Appellant), am conversant with the facts and  
 circumstances of this case and do hereby solemnly affirm and state as follows:



**Statutory Alert:**  
 1. The authenticity of this Stamp certificate should be verified at 'www.shoilestamp.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.

29



The Ld.AR thus submitted that, in the interest of justice, due opportunity may be granted to assessee to represent its case.

The Ld.DR though objected could not controvert the submissions made in the affidavit.

I have perused the submissions advanced and note that substantial justice has not been rendered to the assessee in the present facts of the case.

7. I have perused the materials on record. I find from the perusal of the impugned order that the Ld.CIT(A) dismissed the assessee's appeal *in limine*, taking view of non-compliance with notices of hearing issued by office of the Ld.CIT(A). He noted that hearings were fixed on 22/01/2021, 05/03/2021, 23/03/2021, 27/05/2021, 02/09/2021, 23/09/2022 and 24/11/2022. The Ld.CIT(A) further recorded that, neither there was any appearance from the assessee's side nor any adjournment was requested on relevant dates. The Ld.CIT(A) therefore dismissed assessee's appeal *in limine* on account of non-appearance by

stating that the assessee was not interested in present this appeal.

8. It is well-settled that powers of Ld.CIT(A) are co-terminus with powers of the Assessing Officer. *Hon'ble Supreme Court* in various decisions has held that an assessee having once filed an appeal, cannot withdraw it, and, even if any assessee does not appear at the hearing, the Ld.CIT(A) is to proceed with the enquiry and pass an order on merit. As it is not open to the Assessing Officer not to complete an assessment proceedings by allowing any assessee to withdraw the return of Income filed; similarly, it is not open for the Ld.CIT(A) to, not pass order on merits, by dismissing the appeal *in limine*.

I therefore remit this issue back to the Ld.CIT(A). The Ld.CIT(A) is directed to pass detailed order on merits, after considering the submissions / evidences filed by assessee.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

**Accordingly the grounds raised by the assessee stands allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

**Order pronounced in the open court on 25<sup>th</sup> April, 2023.**

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 25<sup>th</sup> April, 2023.  
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore