

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH : BANGALORE**  
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**  
**AND**  
**MS. MADHUMITA ROY, JUDICIAL MEMBER**

<b>ITA No.570/Bang/2023</b>
<b>Assessment Year : 2018-19</b>

R.R Earthworks, #214, 3 <sup>rd</sup> Main, 5 <sup>th</sup> Cross, Defence Colony, Indiranagar, Bengaluru-560 038.	<b>Vs.</b>	The Dy. Commissioner of Income-tax, CPC, Bengaluru.
<b>PAN - AAKFR 2994 N</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

Revenue by	:	Dr. G Manoj Kumar, CIT, DR
Assessee by	:	Shri Hemant Pai, CA

Date of Hearing	:	07-12-2023
Date of Pronouncement	:	14-12-2023

**ORDER**

**PER MADHUMITA ROY, JUDICIAL MEMBER**

This appeal filed by the assessee is directed against the order dated 24/11/2021 passed by the CIT(A) dated 24/11/2021 for the assessment year 2018-19.

2. The assessee has come up against ex-parte order passed by the Id.CIT(A) dated 24/11/2021. Admittedly there was delay of 236 days. Though the assessee made request for condonation of

delay in Form No.35, the same was not condoned by the Id.CIT(A) finding the explanation rendered by the assessee not proper.

3. However, there is delay of 558 days in preferring the instant appeal before us against the order passed by the Id.CIT(A). It was argued by the Id.counsel for the assessee that in fact there was 558 days delay in preferring appeal out of which days to be for COVID period and 60 days as statutory relaxation in filing appeal. In that view of the matter there is, in fact, 435 days delay in preferring the appeal before us.

4. The assessee preferred an application for condonation of delay, which is as following

*“1. An order was passed under section 250 of the Income Tax Act, 1961 ("the Act") by the Hon'ble Commissioner of Income Tax (Appeals) — 11, Bengaluru for the Assessment Year 2018-19 on 24.11.2021.*

*2. It is submitted that the order passed under section 250 of the Act was received by email on 24.11.2021 in the spam folder and the same was not perused by the staff of the Appellant. Subsequently, it came to the notice of the present tax counsel while verifying the status of other matters only in the month of July, 2023, upon which all the necessary steps were taken to file an appeal immediately.*

*3. It is submitted that the appeal ought to have been filed within 60 days from the date of the order i.e., on or before 24.01.2022, however the appeal was filed only on 07.08.2023 and consequently, a delay of 558 days, i.e., from 22.01.2022 to 07.08.2023, arose in filing the impugned appeal.*

*4. In view of the above submissions, it is contended that the delay was not intentional or deliberate and arose due to the aforementioned circumstances which were beyond the appellant's control, and consequently, it is prayed that the delay be condoned and the appeal be adjudicated on the merits of the matter in the interest of justice and equity.*

5. *It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondents if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST.Katiji and Others [1987] 167 ITR 471 and in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507.*

*Further reliance is placed on the decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733.*

6. *The appellant places reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 20 and other batch of appeal order dated 28.10.2011 has condoned the delay of 5 years in filing the appeal before the Commissioner of Income Tx (Appeals).*

7. *The appellant places reliance on the decision of this Hon'ble Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in ITA No. 2785/Bang/2004 order dated 25.04.2006 wherein the Hon'ble Tribunal has condoned the delay of 1,331 days i.e. 3 Years, 8 Months and 22 days in filing the appeal.*

8. *Wherefore, it is once again humbly prayed that the delay of 558 days may kindly be condoned for the advancement of substantial cause of justice and equity. “*

5. We have heard the rival submission made by the respective parties and after perusing of the materials placed before us.

6. It is the plea taken by the assessee that though the order was received on 24/11/2021 by email, the same was not perused by the staff of the assessee and only upon verification of the status of the appeal by the present counsel in the month of July 2023,

steps were taken to file appeal before us, which according to was to be genuine. We are, thus, satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned.

7. However, as we have seen that though the assessee made application for condonation, it was not considered in its proper perspective by the Id.CIT(A) and in that view in mater to avoid miscarriage of the justice, we have sent to the file back to the Id.CIT(A) to reconsider the issue particularly delay as explained by the assessee and to pass speaking and reasoned order after affording an opportunity of being heard to the assessee. We also make it clear in the event that the assessee fails to cooperate with the CIT(A), the CIT(A) would be at liberty to pass order strictly in accordance with law.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14<sup>th</sup> December, 2023

Sd/-  
(CHANDRA POOJARI)  
Accountant Member  
Bangalore,

Sd/-  
(MADHUMITA ROY)  
Judicial Member

Dated, the 14<sup>th</sup> December, 2023.

/Vms/

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore