

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

**Before Shri George George K, Vice-President &
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No.148/Bang/2024 : Asst.Year 2018-2019

ITA No.149/Bang/2024 : Asst.Year 2018-2019

Sri.Habeeb Shaik 12 CM Lane, Jolly Mohalla Hosur, Bangalore – 635 114. PAN : CVAPS1405C.	v.	The Income Tax Officer Ward 2(2)(5) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Shivkumar, CA

Respondent by : Sri.Sandeep Kumar H.S., Addl.CIT-DR

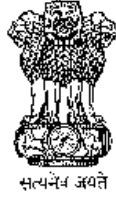
Date of Hearing : 12.03.2024	Date of Pronouncement : 19.03.2024
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ORDER

Per Laxmi Prasad Sahu, AM :

These two appeals filed by the assessee against separate orders passed by the First Appellate Authority (FAA) vide order dated 24.11.2023 [ITBA/NFAC/S/250/2023-24/1058224554(1)] & [ITBA/NFAC/S/250/2023-24/1058223337(1)], respectively, for dismissing the appeal filed by the assessee against the order passed by the Assessing Officer (AO) u/s.143(3) of the Income-tax Act, 1961 ("the Act" hereinafter) and order passed u/s.270 of the Act, for the sole reason that the FAA did not condone the delay of 450 days for filing the appeal. In this regard, the learned AR submitted that the Tax Practitioner Sri.T.V.S.Bhat, M/s.T.V.S. Bhat & Co., who is a Chartered Accountant was representing before the Assessing Officer, NFAC and before the CIT(A), but he did not file appeal

against the assessment order passed by the A.O./NFAC u/s.143(3) as well as u/s.270A of the Act. In this regard, the learned AR of the assessee has filed written submissions and affidavit from Sri.T.V.S.Bhat and the assessee, which are as under:-



INDIA NON JUDICIAL

Government of Karnataka

e-Stamp

Certificate No.	: IN-KA53561377694466W
Certificate issued Date	: 11-Mar-2024 09:02 PM
Account Reference	: NONACC/kakscsa08/NETAKALAPPA CIRCLE/KA-BV
Judicial Doc. Reference	: SUBIN-KAK/KSCSA0808G28433664361W
Purchased by	: T V S BHAT
Description of Document	: Article 4 Affidavit
Property Description	: AFF DAVID
Consideration Price (Rs.)	: 0 (Zero)
First Party	: T V S BHAT
Second Party	: ITAT BANGALORE
Stamp Duty Paid By	: T V S BHAT
Stamp Duty Amount (Rs.)	: 100 (One Hundred only)

**AFFIDAVIT**

I, T.V.S. Bhat, Chartered Accountant of M/s. T.V.S. Bhat and Co, do hereby solemnly affirm and state on oath as under.



11 MAR 2024

1. That I have represented the Appellant, Shri Habeeb Shiak, No.12. CM Lane, Jolly Mohalla, Hosur, Bangalore -635114 as an Authorised Representative in the Proceedings before the L.d. Assessing officer, NaAFC and Ld. CIT(A) NFAC for the A.Y 2018-18.
2. That the Appeal was dismissed by the L.d. CIT(A) NFAC by an Appellate Order dtd: 24-11-2023 on the ground that appellant had not furnished reasonable grounds to condone the delay of 450 days in filing the appeal before Ld. CIT(A) NFAC.
3. That the Assessment Order so received was misplaced in my office and the track was lost.
4. That the Appellant have approached me with the appellate order and I confirmed the fact the appeal against the assessment order couldn't be filed in time due the negligence of the staff member and I have regretted for the delay attributable on my part.
5. That the Appellant has not filed the Appeal before the L.d. CIT(A) NFAC within time since the Appellant was not informed about the disposal of the assessment order dated 26.03.2021.

Date:


 (DEPONENT)
VERIFICATION

What is stated above is true to the best of my knowledge, information and belief.


 (T.V.S BHAT)
 DEPONENT

SWORN TO BEFORE ME



SWORN TO BEFORE ME
 ur aravind g.g.
 ARAVIND PATIL G.G. B.A., LL.B
 ADVOCATE & NOTARY
 2nd Main, Near Old Sub Register Office



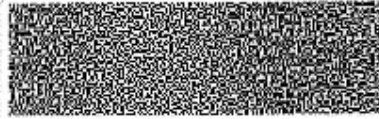
INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No.	: IN-KA53578734349997W
Certificate Issued Date	: 11-Mar-2024 03:01 PM
Account Reference	: NONACC/ kakscsa0B/ NETAKALAPPA CIRCLE/ KA-BV
Unique Doc. Reference	: SUBIN-KAKAKSCSA0866692341190832W
Purchased by	: HABEEB SHAIK
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: HABEEB SHAIK
Second Party	: ITAT BANGALORE
Stamp Duty Paid By	: HABEEB SHAIK
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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AFFIDAVIT

I, Habeeb Shaik, Appellant, do hereby solemnly affirm and state on oath as under.

1. That the Appellant had engaged Sri. T.V.S Bhat, Chartered Accountant to look after the Income Tax matters from time to time.



11 MAR 2024

2. That the former AR Sri. T.V.S Bhat has represented the Appellant before the Assessing officer, NaFAC and Ld. CIT(A) NFAC for the A.Y 2018-19.
3. That the former AR Sri. T.V.S Bhat after representing the matter before the Ld. Assessing officer, NaFAC has not informed the Appellant as to the assessment order passed U/s 143(3) of the Act dated 26.03.2021 until the Appellant came to know that the Appeal so filed against the impugned Assessment Order was dismissed by an Appellate Order dtd: 24-11-2023.
4. That the Appellant came to know about the assessment order only when the Ld. CIT(A), NFAC dismissed the Appeal and contacted the former AR Sri. T.V.S Bhat who has confirmed that the Appeal was dismissed. The former AR informed the dismissal of the Appeal stating that the appeal against the original assessment order couldn't be filed within the limitation owing to negligence of his staff member.
5. That the Appellant submits that the delay in filing appeal before the CIT(A), NFAC was attributable to the negligence of staff member former AR T.V.S. Bhat and not attributable to the Appellant and further submits that if the remedial action would not be taken the interest of the appellant, he would suffer from denial of justice admissible under the Law.

Date:

Shaik Habeeb
(DEPONENT)

VERIFICATION

What is stated above is true to the best of my knowledge, information and belief.

Shaik Habeeb
(Habeeb Shaik)
DEPONENT

**SWORN TO BEFORE ME**

SWORN TO BEFORE ME
Aravind Patil G.G.
ARAVIND PATIL G.G. B.A. LL.B.
ADVOCATE & NOTARY
12th Main, Near Old Sub Register Office
Bengaluru - 560 811

**BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE "A" BENCH, BANGALORE**

ITA No. 148 and 149 /BANG/2024

ASST YEAR : 2018-2019

Habeeb Shaik,
No.12 CM Lane, Jolly Mohalla
Hosur, Bangalore -835114

The Income Tax Officer,
Ward 2(2)(5)
Bangalore

v/s.

APPELLANT

RESPONDENT

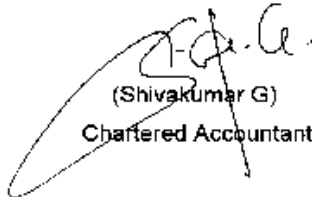
WRITTEN SUBMISSIONS

1. The Appellant begs to file the following Written Submissions in support of the Appeal.
2. **Submission on Delay:-** The appellant ought to have filed the appeal against the impugned Assessment Order dated 26.03.2021 on or before 29.05.2022 considering the direction/relaxation provided by the Hon'ble Supreme Court vide its order dated 10th January 2022 in the Miscellaneous Application No. 21 of 2022 wherein the period from 15-03-2020 till 28-02-2022 shall stand excluded and the balance period of limitation remaining as on 03-10-2021 if any, shall become available with effect from 01-03-2022 and in cases where period of limitation expired between 15-03-2020 till 28-02-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01-03-2022. also if the actual balance period is greater than 90 days then longer period shall apply. Accordingly, the appeal against the assessment order ought to have been filed on or before 30-05-2022. However, the Appeal was filed on 22-04-2023 with a delay of 327 days.

order dated 07-08-2015 in ITA No. 1078/Bang/2014 in the case of Glen Williams v/s. ACIT Circle – 1(1) has followed the decision of the Hon'ble Jurisdictional High Court.

7. The Appellant also relies upon the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition V/s. Mst. Katiji (1987) 167 ITR 471(SC), wherein the Hon'ble Supreme Court had laid down the guidelines in adjudicating the issue concerning the delay in presenting the Appeal beyond the prescribed time limit. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
8. If is further submitted that the Appellant begs to place reliance on the decision of the Hon'ble ITAT Bangalore in the case of EIT Services India Pvt Ltd (formerly Hewlett-Packard Global Soft Pvt Ltd) v/s. ACIT Circle - 2(1)(2) in ITA No. 1555 and 1556/Bang/2017 dtd: 03-11-2020. (relevant para is 11 of the decision on page 6 and 7 where the delay was condoned to an extent of 2625 days)
9. Under these circumstances it is respectfully prayed that this Hon'ble Bench be pleased to condone the delay and set aside the order of CIT(A) to adjudicate the case on merits rather dismissing the appeal on hyper technical grounds.

Date 11-03-2024


(Shivakumar G)
Chartered Accountant

2. The learned AR of the assessee further submitted that the assessee had sufficient cause for preventing to file appeal within the due date and there is no mistake on the part of the assessee. Therefore, the appeal of the assessee should have been admitted by the CIT(A).

3. On the other hand, the learned Departmental Representative relied on the order of the first appellate authority and submitted that the CIT(A) has rightly dismissed the appeal of the assessee because there was no reasonable cause explained before the CIT(A). The submission made by the assessee before the CIT(A), reads as follows:-

“Unfortunately due to the restrictions of Covid pandemic, we were unable to contact our professional consultant and prepare the documents for appeal. Hence, filing of appeal was delayed.”

4. The learned DR further submitted that there is some difference in the reasons stated before the CIT(A) and the affidavit filed. Therefore, this requires examination. The learned DR further submitted that as regards the denial of condonation of delay, the CIT(A) has noted in para 6.10 in his order, which reads as follows:-

“6.10 In order words, where there is sufficient cause shown and the application for condonation of delay has been moved bonafide, the court would normally condone the delay but where the delay has not been explained at all and, in fact, there is unexplained and inordinate delay coupled with negligence or sheer carelessness, the discretion of the court in such cases would normally tilt against the applicant. The reasons cited by appellant do not qualify as reasonable cause. The delay of 450 days for filing appeal is beyond condonation. The reasons cited by appellant do not qualify as reasonable cause as held by courts.”

5. Considering the rival submissions, we noted that the assessee filed return of income declaring income of Rs.15,08,160 and the case was selected for scrutiny. During the course of assessment proceedings, the assessee filed only

balance sheet , profit and loss account and bank statement, but did not comply with other documents as required by the A.O. and the A.O. obtained information from the Commercial Tax Department, Bangalore and accordingly he concluded that the purchase made from M/s.Bharat Enterprises and M/s.Indian Steels, amounting to Rs.34,45,650 is bogus purchase and assessed the income at Rs.49,53,810, and completed the assessment u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act dated 26th March, 2021. The A.O. also initiated penalty proceedings u/s.270A of the Act, on 27.12.2021. Against both the orders, the appeal was instituted on 22nd April, 2023 before the FAA with a delay of 450 days. However, as per the judgment of the Hon'ble Apex Court (order dated 10.01.2022) in the Miscellaneous Application No.21 of 2022, the actual delay was 327 days for filing appeal before the FAA. During the course of appellate proceedings, the reasons for delay was stated as noted supra. The assessee has also filed affidavit stating the reasons and copy of affidavit from Chartered Accountant, Sri.T.V.S.Bhat and from the assessee also extracted above. Considering the reasons noted above, we remit this issue for examining the affidavit for condoning the delay and to decide the issue as per law. However, we make it clear that neither we have condone the delay as argued by the assessee before us nor we have decided the issue on merits of the case.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes, in the above terms.

Order pronounced in the open court on this
day of March, 2024.

A common order passed by us shall be kept in the respective case files.

**Sd/-
(George George K)
VICE-PRESIDENT**

**Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER**

Bangalore; Dated : 19th March, 2024.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	12.03.2024		Sr.PS
2.	Draft placed before author	13.03.2024		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	Date of uploading the order on website			
8.	If not uploaded, furnish the reason			
8.	File sent to the Bench Clerk			Sr.PS
9.	Date on which file goes to the AR			
10.	Date on which file goes to the Head Clerk.			
11.	Date of dispatch of Order.			
12.	Draft dictation sheets are attached			Sr.PS