

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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.230/Bang/2024
Assessment year : 2012-13

Mr. Shashi Bhartiya, # 902, Cedar Godrej Woodsman Estate, Bellary Road, Hebbal, Bangalore – 560 024. <b>PAN : ACSPB 8922G</b>	Vs.	The Income Tax Officer, Ward 6(3)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Ishita Bhaumik, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	05.03.2024
Date of Pronouncement	:	05. 03.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is against the order dated Order dated 18.12.2023 of the Addl./Jt.CIT(Appeals)-1, Jaipur for the AY 2012-13 in not condoning the delay and dismissing the appeal of the assessee.

2. The brief facts of the case are that the assessee filed return of income on 27.03.2013 for AY 2012-13. As per information with AIR/CIB, assessee has made business transaction of Rs.1,47,64,208

(42,75,498 & 42,75,498) on 18.07.2011 and a sum of Rs.42,56,606 & Rs.42,56,606 on 22.06.2011. As per Form 26AS, assessee has received a sum of Rs.9,59,115 during the year. However it was noted that assessee has declared income of Rs.4,82,540. Accordingly case was reopened u/s. 147/148 after obtaining approval from the competent authority and notices were duly served to the assessee. The assessee did not respond to the notices. A show cause notice was also issued to the assessee and assessment was completed u/s 144 of the Act treating the entire cash deposits as business receipt of Rs.1,70,64,208 and applying 8% net profit computed the business income of Rs.13,65,136. The AO also noted that as per Form 26AS assessee has received a sum of Rs.9,59,115, however assessee has declared income of Rs.4,82,450. Therefore, the difference was considered as income from other sources. Accordingly income was computed of Rs.23,24,252.

3. Aggrieved from the above order, the assessee filed appeal before the CIT(Appeals). The CIT(Appeals) noted that there is a delay of 2 years 5 months for filing the appeal which was to be filed by 23.01.2020, however it was filed on 14.6.2022. No sufficient reason was explained by the assessee for the inordinate delay in filing the appeal, therefore the CIT(Appeals) rejected condonation of delay and dismissed the appeal of the assessee. Against this, the assessee is in appeal before the ITAT.

4. The ld. AR submitted that the ld. CIT(Appeals) has wrongly dismissed the appeal of the assessee without condoning the delay

whereas the reasons for condonation of delay was duly explained that the assessee is a Senior Citizen aged 73 Yrs and he is not aware of the notices issued or any of the proceedings under the Income Tax Act. For his case, just he is filing return of income and due to health issue, the Doctor had advised him not to step out of home or meet people, due to which he could not identify tax consultants to assist him in the appeal process. The assessee saw the communication of the assessing authority first time on 21.01.2021 and on 28.01.2021 the appellant with the help of his son submitted his reply online explaining the facts of the case and tried to clarify the mistake apparent from record. The Id. AR submitted that the bank had wrongly reported the transactions in the portal. However, later on the bank realized the mistake and corrected it. She further submitted that at page 6 the correct Form 26AS is placed and there is only interest received from Corporation Bank, R.T. Nagar Branch of Rs.4,79,556.77 and TDS has been credited of Rs.55,516. The assessee is deriving income from house property of Rs.1,02,894 and income from other sources is reported by Corporation Bank in Form 26AS of Rs.4,79,557 and assessee has claimed deduction under Chapter VIA of Rs.1,00,000. This is the only income of the assessee. Therefore, the AO has wrongly considered the information received, but later on it was corrected by the bank which has not been considered by the AO and he made addition unnecessarily. The CIT(Appeals) has not considered the factual situation of the Senior Citizen and did not condone the delay. Further she submitted that if the documents are accepted by the revenue

authorities, the returned income declared by the assessee is correct and no further addition is called for. Therefore she requested that the matter should be verified by the revenue authorities once again.

5. The ld. DR relied on the order of the lower authorities.

6. Considering the rival submissions, we noted that the assessee is a Senior Citizen aged about 73 years and filed return of income u/s. 139 and later on the case was reopened u/s. 147/148 on the basis of AIR/CIB information with the department. The AO issued various notices, but it was not responded, therefore the entire reported amount of Rs.1,70,64,208 was treated as business receipt and 8% income has been adopted. The AO has also computed income from other sources of Rs.4,76,665.

7. However, on appeal before the first appellate authority (FAA), there was a delay in filing the appeal which was not condoned. We have gone through the documents submitted by the assessee by email. Later on the assessee made correspondence with CPC on 26.07.2021 and grievance filed on 30.09.2021. He also filed grievance before the CPC on 27.06.2021. Before the FAA, the reason for not filing the appeal within the due date was explained, statement of facts were submitted and correct Form 26AS was also submitted. We have seen the updated Form 26AS dated 20.01.2021. The assessee has received interest income of Rs.4,79,555.77 on which TDS has been deducted at Rs.55,516 and no other transaction/information is reported. But the CIT(Appeals) did not consider these facts and relying on the judgment

of the Hon'ble Apex Court dismissed the appeal of the assessee. The assessee had sufficient reason for not filing the appeal before the due date. We note from the documents that the assessee has two bank accounts at SBI, Amrutahalli and Corporation Bank, R.T. Nagar. We note that there is hardly transaction done by the assessee during the impugned year. Considering the totality of facts and documents produced before us, in our opinion, the assessee has explained sufficient reason for not filing the appeal within the due date. Therefore, we remit this issue to the AO for fresh consideration and to decide the issues as per law, after giving opportunity of hearing to the assessee. The assessee is directed to produce all documents to substantiate his case and not seek unnecessary adjournment for early disposal of the case.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on the 05<sup>th</sup> day of March, 2024, through virtual hearing.

Sd/-

( SANDEEP SINGH KARHAIL )  
JUDICIAL MEMBER

Bangalore,

Dated, the 05<sup>th</sup> March, 2024.

*/Desai S Murthy/*

Sd/-

( LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.