

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.381/Bang/2024
Assessment Year: 2017-18

Shabina Ibrahim Pinto V. Sudhindranath No.51/7/1, Chittrakoot, Ratna Avenue Richmond Road Bangalore 560 025 Karnataka PAN NO : CMFPP0164D	Vs.	ITO Ward-3 Udupi
APPELLANT		RESPONDENT

Appellant by	:	Ms. Pooja Maru, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing counsel for department

Date of Hearing	:	25.04.2024
Date of Pronouncement	:	25.04.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 19.1.2024. The assessee has raised following grounds of appeal:

- 1. The Learned Assessing Officer failed to appreciate the fact that your Appellant was not residing in India during that time and hence no notice was delivered to her.*
- 2. The Learned Assessing Officer erred in not following proper procedure laid down by the CBDT before deciding the issue,*
- 3. The Learned Assessing Officer, while in possession of the bank statement of your Appellant, had not given due credit to the Cash withdrawals made by your Appellant prior to the deposit.*

4. *The Learned Commissioner (Appeals) has erred in not issuing a physical notice before deciding the said appeal.*
5. *The Learned Commissioner (Appeals) has erred in not giving proper opportunity to your Appellant before deciding the said appeal.*
6. *The Learned Commissioner (Appeals) did not consider the Cash withdrawal of Rs.40,00,000/- on 31/August/2016 before dismissing the appeal.*
7. *The Learned Commissioner (Appeals) erred in dismissing the appeal without granting condonation of delay in filing the appeal.*

2. Facts of the issue are that in this case assessment order was framed ex-parte u/s 144 of the Income Tax Act, 1961 (in short "The Act") making addition of Rs.18 lakhs towards cash deposit to SCDCC Bank Ltd., Karkala Branch during demonetization period. Against this assessee went in appeal before Id. CIT(A) belatedly by filing the appeal with delay of 611 days. The assessee explained before NFAC that she is residing in Kuwait since 1989 and visited India once in one or two years for approximately 15 days and her visit to India for medical treatment and she is not well versed in ITBA portal. Hence, she has not gone through the assessment order passed by AO on 25.12.2019. Thus, there was 611 days delay in filing the appeal before NFAC and prayed that the NFAC to condone the delay. However, NFAC has not condoned the delay. Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. In this case, assessment order was passed on 25.12.2019. The assessee pleaded that she has not received the assessment order so as to file the appeal before the Tribunal even presuming that the assessment order was uploaded to Income Tax portal on 25.12.2019 i.e. the date of passing the assessment order. The time limit to file appeal before NFAC was 30 days from this date that will end on 24.1.2020. However, in this case, appeal was filed before the NFAC on 25.9.2021. Thus, according to the NFAC, there was a delay of 611 days in filing the appeal before

NFAC. Out of this delay from 15.3.2020 to 25.09.2021 need not be explained by the assessee as this delay of Covid period was already condoned by the Hon'ble Supreme Court in Miscellaneous Application No.21 of 2022 and in Miscellaneous Application No.665 of 2021 in Suo Moto WP No.(C) No.3 of 2020 in Re: Cognizance of Limitation dated 10.1.2022 for the period from 15.3.2020 to 28.2.2022. Thus, in our opinion, the delay to be accounted from 24.1.2020 to 14.3.2020 i.e. prior to Covid period which is worked out at 51 days and the assessee is required to explain only this delay and not 611 days. Being so, in our opinion, in the present case, assessee is required to explain only 51 days. Assessee explained that this delay was due to her poor knowledge in ITBA portal. Being a non-resident in Kuwait and inadvertently she has not noticed the assessment order sent by mail. In our opinion, there is a good and sufficient reason in not noticing the uploading of assessment order by department through ITBA portal. Accordingly, we condone the delay of 51 days and appeal of the assessee is admitted for adjudication.

3.1 After admitting the appeal, in our opinion, it is appropriate to remit the issue to the file of Id. AO since order passed by Id. AO was u/s 144 of the Act and he has not examined the source for depositing the cash to assessee's bank account during demonetization period. Accordingly, the issue is remitted to the file of Id. AO to examine the issue afresh and the assessee is at liberty to place necessary evidence in support of her claim explaining the source of deposit into her bank account.

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

Order pronounced in the open court on 25th Apr, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 25th Apr, 2024.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**