

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

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

ITA No.607/Bang/2024
Assessment Year: 2017-18

Sondekoppa Sundarswamy Naganand No.24, 2 <sup>nd</sup> Floor, Keshavanivas 1 <sup>st</sup> Main Road, Gandhinagar Bangalore 560 009  <b>PAN NO : AAOPN8957F</b>	<b>Vs.</b>	ACIT Circle-2(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Padam Chand Khincha, A.R.
<b>Respondent by</b>	:	Shri V. Parithivel, D.R.

<b>Date of Hearing</b>	:	13.05.2024
<b>Date of Pronouncement</b>	:	13.05.2024

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against the order of NFAC for the assessment year 2017-18 dated 27.2.2024. The assessee has raised following grounds of appeal:

1. *“The CIT (Appeals) erred in not condoning the delay in filing the Appeal by following certain decisions cited in his order. He ought to have followed very well settled principles of law that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay. Kammavari Credit Co-Operative Society Ltd. v. ACIT (2019) 416 ITR 180 (Karn.)*
2. *The CIT (Appeals) erred in not considering & accepting the Grounds stated in Form 35 vide. SI.No.15, wherein a detailed reason/ explanation was given to seek condonation of delay in filing the Appeal. He erred in not considering the same & also erred in mentioning in his order that*

*Appellant has not filed application seeking condonation of delay in filing the Appeal.*

3. *The CIT (Appeals) ought to have noticed & taken on record that an application was filed by the Appellant before the AO on 19.12.2019 for rectification of the computation sheet & the same was pending for long and was never decided, which caused delay in filing the Appeal since Appellant was awaiting the rectification order as the error in the order was apparent and obvious from the record. Since no order was received by the Appellant an appeal was preferred explaining the delay. The order U/ s. 143(3) dt.07.12.2019 was communicated to the Appellant on 09.12.2019. He ought to have noticed that there is no deliberate intention on the part of the Appellant to file the Appeal belatedly on 16.02.2021.*
4. *The CIT(Appeals) erred in not following the principles laid down by the Hon'ble Supreme court of India in the following cases-*
  - a. *CIT vs. Uttam Chand (2019): In this case, the Supreme Court emphasized that the discretion to condone delay should be exercised judiciously, keeping in mind the interests of justice. The Court stated that the paramount consideration should be to prevent injustice, and technicalities should not be allowed to defeat substantive rights.*
  - b. *CIT vs. P.V.S. Beedies Pvt. Ltd. (2002): The Supreme Court held that the delay in filing appeals should be condoned if the appellant can establish sufficient cause for the delay. Courts have also held that the expression "Sufficient Cause" shall receive liberal consideration for the sake of Justice. The Court observed that the purpose of condonation provisions is to enable the courts to do substantial justice between the parties.*
  - c. *CIT vs. Hindustan Petroleum Corporation Ltd. (2003): In this case, the Supreme Court reiterated that the courts should adopt a liberal approach in condoning delay if sufficient cause is shown. The Court emphasized that the primary objective should be to do substantial justice, and technicalities should not be a hindrance.*
  - d. *D Gupta Emerald Mines Pvt Ltd Vs PCIT- Date of Judgement/Order: 25/09/2023*

*The Court's decision to condone the delay in filing the appeals underscores the principle of ensuring a fair hearing for the appellant. It serves as a reminder of the importance of procedural justice in the Indian tax system, ultimately ensuring that taxpayers have a reasonable opportunity to contest their cases based on their merits.*
5. *The CIT (Appeals) erred in not considering the Appeal on merits in view of the principles laid down in the above cited decisions. He ought to have*

*considered the Appeal on merits & disposed-off in the interest on natural justice.*

6. *The CIT (Appeals) should have considered the case on merits & noticed that the raising a demand of Rs. 8,56,354 by AO was erroneous, especially when the returned income was duly accepted and there is no addition to income as per the textual portion of the order. He ought to have noticed that the AO erred in preparing the computation sheet by mentioning 'income from business and profession' as Rs. 6,69,05,839 instead of Rs.6,51,42,543 which is the assessed and correct income.*
  7. *The CIT(Appeals), erred in not noticing the fact the 'business income' mentioned in computation sheet which is forming part of the assessment order is wrong and he ought to have that noticed that it is a mistake apparent on record & is a subject matter of rectification. He ought to have noticed that the AO had committed an error while preparing the computation sheet which is forming part of assessment order & is required to be rectified.*
  8. *The CIT(Appeals), erred in not noticing the fact that the computation sheet was prepared with an obvious error as there cannot be any increase in the 'business income' when there is no disallowance or addition to business income as per the textual portion of the order U/s.143(3).*
  9. *The CIT (Appeals) ought to have noted that there would not be any liability of interest under section 234B and 234C when the entire tax liability was duly discharged through TDS and advance tax.*
  10. *CIT (Appeals) be directed to consider the case on merits in View of the decisions cited in the preceding paragraphs & annul the demand which has arisen due to the mistake committed by AO while preparing the computation sheet & when there is no addition to income.*
  11. *Appellant craves to add or delete any other grounds of appeal at the time hearing."*
2. There was a delay of 69 days in filing the appeal before NFAC, which has not been condoned by the NFAC on the reason that there was no good and sufficient reason in filing the appeal belatedly. Before us, ld. A.R. submitted that the delay was due to following reasons:

*"The appeal for the A Y-2017-18 Ref: Order Under section 143(3) for the A Y-2017-18 My income tax return was picked up for scrutiny assessment and notices under section 142(1) read with Sec. 143(2) were*

*served on me calling for certain documents to be produced. I have produced all the required and necessary documents electronically online from time to time and also physical copies were submitted personally. The assessment is completed under Sec. 143(3) by accepting the returned income. No additions were made to the returned income. The assessing officer AO in her order has categorically said that on the basis of details submitted by the assessee, the assessment is completed accepting the returned income. The AO has raised a demand of Rs. 8,56,354 where there is no addition to the returned income. The AO in her order under section 143(3) has clearly said that it has declared income from business and profession of Rs.6,51,42,543. The AO while preparing the computation sheet, income under the head business or profession is shown as Rs. 6,69,05,839 as against assessed and correct income of Rs. 6,51,42,543. This mistake has resulted in a demand Rs. 8,56,354. Aggrieved by the above mistake, I had filed a petition under grievance as the nature of issue does not involve a major mistake as compared to order under section 143(3) read with computation sheet. I had also met the AO immediately after completion of assessment and sought for rectification of the mistake. Unfortunately, the same is pending and remaining un-resolved till today. Hence the appeal is preferred before you now. In view of the circumstances explained above request you to condone the delay in filing the Appeal now. I shall be grateful for your kind consideration and admission of the Appeal.”*

3. We have gone through the reasons advanced by the assessee's counsel and we find that the assessee has been pursuing alternative remedy by addressing to the grievance cell of the department, which is a good and sufficient reason in not filing the appeal in time before NFAC. Accordingly, we condone the delay and the appeal is admitted for adjudication.

3.1 After admitting the appeal, the ld. A.R. submitted that the ld. AO while passing the assessment order observed as under:

*“The assessee, an individual is a legal professional. During the year, it has declared income from house property of Rs.21,42,904/-, income from business and profession of Rs.6,51,42,543/-, income from Capital Gains of Rs.28,794/- and income from other sources of Rs.88,50,706/-.*

3.2 However, while in computation sheet, he has taken business income at Rs.6,69,05,839/- instead of Rs.6,51,42,543/- as income from business and profession. Thus, there was a variation between these two figures mentioned in the assessment order vis-à-vis computation sheet. In our opinion, the ld. AO has not given any

reason as to how he arrived at business income at Rs.6,69,05,839/-  
This requires to be verified with the return of income filed by the  
assessee. Accordingly, the issue is remitted back to the file of ld. AO  
for reconsideration.

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

Order pronounced in the open court on 13<sup>th</sup> May, 2024

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 13<sup>th</sup> May, 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.**