

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>ITA Nos. 653 to 655/Bang/2024</b>
<b>Assessment Years : 2015-16 &amp; 2020-21</b>

Shri Rajesh Balda, No. 52, 2 <sup>nd</sup> Floor, SM Lane, Cottonpet Cross, Bangalore – 560 053. <b>PAN: BHEPB0380E</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2(2)(3), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sudheendra .B.R, Advocate
Revenue by	:	Shri B.R. Ramesh, Addl. CIT (DR)

Date of Hearing	:	14-05-2024
Date of Pronouncement	:	22-05-2024

**ORDER**

**PER BENCH**

At the outset, the Ld.AR submitted that the Ld.CIT(A) did not grant opportunity to assessee in accordance with law and therefore assessee could not submit necessary evidences and submissions in respect of the claims.

2. He submitted that for A.Y. 2020-21, the quantum appeal has been filed before the Ld.CIT(A) with a delay of 214 days. The Ld.AR submitted that originally the assessee sought not to file appeal against 143(3) order. He further submitted that, it was only after the penalty order u/s. 270A of the act, that the assessee preferred appeal against the quantum addition in 143(3) thereby causing the considerable delay. The Ld.AR in respect of the delay before the Ld.CIT(A) submitted that, in form 35, the request for condonation of delay was sought for by submitting as under:

*“1) Assessment Order and Demand Notice passed by the learned Assessing Officer are dated 26.09.2022. Therefore, the due date for filing the appeal was on or before 25.10.2022.*

*2) The assessment was completed by making excessive and arbitrary additions towards interest on housing loan for want of Interest certificate from the bank. Though the consolidated interest is reflected in the housing loan statement, the year wise breakup of the same was not available with the appellant. Owing to the short time given for production of the same and also since the bankers were not providing the required certificate the same could not be furnished within the given time to the assessing officer.*

*3) Based on professional advice received by the appellant and the strong ground which he has the appellant deems it prudent to file this appeal. He was advised to obtain the year wise interest certificate from the bank for production of the same before the appellate authorities.*

*4) The appellant is continuously and regularly trying to obtain the certificate from the bank but even till date the same has not been furnished by them. All visits and telephone calls to the bank have not yielded any results.*

*5) Since considerable time is lost in the process of obtaining the certificate this appeal petition is being filed*

*now without wasting further time in getting the certificate from the bank.”*

**3.** He submitted that the appeal against penalty order passed in ITA No. 655/Bang/2024 is filed within period of limitation before the Ld.CIT(A).

The Ld.AR submitted that before the Ld.CIT(A), assessee could not appear as he was taking care of his aged mother who was 74 years old and was suffering from medical condition of High BP and Diabetes. Under such circumstances, assessee totally lost track of the notices issued and could not appear before the Ld.CIT(A).

**4.** The Ld.AR submitted that only two opportunities were granted to the assessee in all the three appeals by the Ld.CIT(A) as has been recorded at page 34 that reads as under:

*“During the appeal proceedings, various notices u/s 250 were issued and as per office record, the following are the dates of notices/ communication with the status of their compliance or otherwise:*

<i>Date of notice</i>	<i>Deadline of hearing/ submission fixed as per the notice</i>	<i>Outcome</i>
<i>02/02/2024</i>	<i>08/02/2024</i>	<i>No compliance nor any request for adjournment</i>
<i>12/02/2024</i>	<i>16/02/2024</i>	<i>No compliance nor any request for adjournment</i>

*The conduct of the Appellant, as inferred from the last column of the aforesaid table/evidences that the Appellant is not interested in pursuing the Appeal: the law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known latin dictum,*

*"VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.*

*1. The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar, Kolkata vs. D.C.T., C.C.-XXI (15 March, 2016) (ITA Nos. 450/Ko1/2013 for Asst. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.*

*2. The Hon be Madhya Pradesh High Court in the case of Estate of LateTukojirao Holkar vs. CWT (223 IIR 480) held as under:*

*"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."*

*1. Similarly, the Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT (2008) 296 IT 495 returned the reference unanswered since the assessee remained absent and there was no assistance from the assessee.*

*2. Their Lordships of Hon'ble Supreme Court in the case of CIT vs. B.Bhattacharjee & Another (118 IT 461 at page 477-478) held that appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same. In the judgment, their Lordships averred as follows:*

*".....This turns on the meaning of the words "preferred an appeal". "Preferred" is a word of dual import. Its semantics depend on the scheme and the context; its import must help, not hamper, the object of the enactment even if liberty with language may be necessary. There is good ground to think that an appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests.*

*Black's Law Dictionary gives the following meaning: 'PREFER: To bring before; to prosecute; to try to proceed*

*with'. Thus, preferring an indictment signifies prosecuting or trying an indictment. It means to give advantage, priority, or privilege; to select for/first payment, as to prefer one creditor over others. Thus, it may mean prosecute or effectively pursue a proceeding or merely institute it. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it.....”*

*In view of the above, it is clear that the Appellant is not aggrieved with the reassessment order impugned herein and is not interested in pursuing the same. Accordingly, the additions/disallowance as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.*

*The Last ground of appeal is always reserved for adding/altering/amending and/or substituting any or all grounds of appeal before the taking place of actual hearing or even in course of the hearing , if the situation so warrants. Since the appellant has nothing to say on this, This ground of appeal is dismissed as "not pressed".*

*In view of the appellant's total non-compliance during appeal proceedings, I find it extremely difficult to adjudicate on the appeal for want of adequate submission and clarification, counter-clarification.*

*In the result, the appeal is dismissed.”*

**5.** The Ld.AR further submitted that identical is the observation of the Ld.CIT(A) in ITA No. 654/Bang/2024, wherein the appeal was filed belatedly before the Ld.CIT(A). He thus submitted that in the interest of justice, the issue may be remanded to the Ld.CIT(A) to consider in accordance with law.

**6.** On the contrary, the Ld.DR vehemently opposed the appeals to be remanded to the Ld.CIT(A). He submitted that assessee could have appeared before the Ld.CIT(A) as the mother was only suffering from High BP and Diabetes which he could have

otherwise managed. The Ld.DR submitted that there is no error in the orders passed by the Ld.CIT(A) in all the three appeals and the same deserves to be upheld. Placing reliance on the affidavit filed by the assessee before this *Tribunal* and the medical certificate issued by the doctor accompanying the said affidavit, the Ld.DR submitted that, it is make believe and there was no such serious issue for the assessee to ignore the notices issued. He submitted that, the attitude of the assessee is very clearly and rightly been recorded by the Ld.CIT(A). He thus submitted that the Ld.CIT(A) rightly dismissed the appeal for non-prosecution.

**7.** We have perused the submissions advanced by both sides in the light of records placed before us.

**8.** We note that, admittedly there is a delay of 214 days in ITA No. 654/Bang/2024 before the Ld.CIT(A). The reason for the delay is bonafide as after accepting the addition and paying necessary taxes did not except the penalty proceedings to be initiated u/s. 270A of the act. It was only when the order u/s. 270A was passed, the assessee filed appeal before the Ld.CIT(A) against the quantum addition thereby causing the delay.

**9.** Be that as it may, we note that, Ld.CIT(A) issued only two notices of hearing to the assessee in the same month and passed the separate impugned orders on the same date. The reason submitted by the assessee for not able to adhere to the notices has been explained in the affidavit dated 11.05.2023 filed by the

assessee. It is submitted that the assessee's mother who was aged 74 was suffering with High BP and Diabetes and that assessee was taking care of the medical situation though she was not hospitalised.

**10.** The Ld.DR has vehemently opposed such submissions by submitting that the medical condition faced by the assessee could have been handled, forgetting the fact that such situation can arise with anyone at any point of time. If we appreciate the argument of the Ld.DR, the essence of principles of natural justice will die which cannot be allowed. It is but obvious that when a medical situation arises in the family, however small or big it may be, it mentally disturbs every family member.

**11.** Due respect has to be granted to such circumstances and necessary benefit should be extended empathetically. Even otherwise, principles of natural justice warrant that substantial justice must be pitted against technicalities. Such kind of arguments from the Ld.DR is absolutely unappreciated. We therefore condone the delay caused in filing appeal before the Ld.CIT(A) in ITA No. 654/Bang/2024. We also remand all the appeals back to the Ld.CIT(A) to consider the issues raised therein in the light of the evidences filed.

**12.** The assessee is directed to furnish relevant applications in support in accordance with law. The Ld.CIT(A) is directed to pass a reasoned order on merits considering the evidences filed by the

assessee in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly, the grounds raised by the assessee in all the appeals stands allowed for statistical purposes.**

**In the result, all the three appeals filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 22<sup>nd</sup> May, 2024.**

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 22<sup>nd</sup> May, 2024.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore