

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 356/Bang/2024
Assessment Years : 2014-15

Pathapathi Vijayakumar, No.76, 3 rd Floor, HVV Plaza, 15 th Cross 4 th Main, Malleswaram, Bengaluru-560 003. PAN – ACJPV 1514 B	Vs.	The Dy. Commissioner of Income Tax, Circle-2(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar S.V, Advocate
Revenue by	:	Shri Vilas V Shinde, CIT (DR)

Date of hearing	:	30.05.2024
Date of Pronouncement	:	05.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 02/01/2024 in DIN No. ITBA/ NFAC/S/ 250/ 2023-24/1059267076(1) for the assessment year 2014-15.

2. In the present case, the assessment was framed u/s 147 r.w.s. 144/144B of the Act vide order dated 26/03/2022. The assessee against such order filed an appeal before the Id. CIT(A) dated 01/08/2022,

whereas the time limit for filing the appeal expired on 25/04/2022 as specified u/s 249(2) of the Act. Thus, a delay of 98 days has occurred in filing the appeal. The delay in filing the appeal by the assessee was not explained and, therefore, the Id. CIT(A) dismissed the appeal of the assessee as not maintainable.

3. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

4. The Id. AR before us contended that the business of the assessee has been shut down and there was no supporting staff available with the assessee to comply with the notices issued by the revenue authorities. Furthermore, the entire receipts and term deposits on gross basis have been treated as income of the assessee, which is not sustainable. The Id. AR further prayed to give one more opportunity to the assessee to represent his case before the AO as the assessment was made ex-parte.

5. On the other hand, the Id. DR contended that the assessee being negligent should not be given further opportunity. The Id. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there was a delay in filing the appeal by the assessee as pointed out by the Id. CIT(A). However, we note that the Hon'ble Supreme Court on account of COVID pandemic has extended the time limit for filing various appeal in the case of MA No. 665 of 221 Cognizance for Extension of Limitation, reported in [2022] 134 taxmann.com 307 (SC). As such, the Hon'ble Supreme Court has extended the time limit from 15/03/2020 to 28/02/2022 for calculating the limitation period for filing the various petitions/ statements/

applications/ appeal and other proceedings. Furthermore, another period of 90 days was granted for making the necessary compliances from 01/03/2022. The relevant extract of the judgment is reproduced as under:

In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

6.1 On calculating the period of delay in filing the appeal by the assessee in the case on hand, we find that the delay in filing the appeal by the assessee is very insignificant after considering the direction of the Hon'ble Apex Court discussed above. Considering the above, we are of the view that the Id. CIT(A) should have condoned the delay in filing the appeal by the assessee in the given facts and circumstances. Accordingly, we condone the delay in filing the appeal by the assessee before the Id. CIT(A).

6.2 We further note that the assessee has also not complied with the notices issued by the AO during the assessment proceedings. As such, we find that there were 2 notices issued by the AO dated 10/11/2021 and 08/02/2022 u/s 142(1) of the Act, which were not admittedly complied with by the assessee, but we note that such notices were issued during the COVID period as discussed above. Thus, considering all these facts stated above and in the interest of justice and fair play, we are inclined to extend one more opportunity to the assessee and, therefore, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law. Hence, ground of appeal raised by the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in court on 5th day of June, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 5th June, 2024

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore