

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

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

ITA No.774/Bang/2024
Assessment Years : 2018-19

Venkataramanappa Suma, Ward No.18, Anand Nagar, Vijayapura, Devanahalli Taluk, Bengaluru Rural District - 562135. PAN – DDQPS 8511 E	Vs.	The Income Tax Officer, Ward-1, Chikaballapur. The Income Tax Officer, NeAC, Delhi.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Ms. Matta Padma, Addl. CIT (DR)

Date of hearing	:	04.06.2024
Date of Pronouncement	:	18.06.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi dated 26/02/2024 in DIN No. ITBA/NFAC/S/250/2023-24/1061537666(1) for the assessment year 2018-19.

2. In the present case, there was a delay in filing the appeal before the Id. CIT(A) for 541 days. The assessee regarding the delay submitted as under:-

a) She was shifted her place from Banshankari, Bangalore to Mallasandra, Bagepalli and therefore, the assessment order was not received by her.

b) She could not get proper guidance from the tax consultant.

c) There was COVID Pandemic when the assessment order was passed dated 19/04/2021

3. In view of the above, the assessee submitted that the factors discussed above were the reason for not filing the appeal within the stipulated time. Thus, it was prayed by the assessee that there was sufficient cause which prevented the assessee to file the appeal within the time specified u/s 249 of the Act. Thus, the delay in filing the appeal deserves to be condoned.

4. However, the Id. CIT(A) observed that the reasons given by the assessee for delay in filing the appeal are vague, non-specific, and not coherent with the facts available on record. Accordingly, the Id. CIT(A) dismissed the appeal filed by the assessee on the reasoning that the delay in filing the appeal has not been properly explained by the assessee by observing as under:

"Thus, the submissions of the appellant w.r.t. delay condonation request are found to be vague, non-coherent with the facts on record, inconsistent and self-contradictory and without any basis and not backed by any specific details and evidences. Hence, the same lack merit for consideration.

In the case of Perfect Circle India Ltd. V. ACIT [2020] 120 taxmann.com 262 (Bombay), the Hon'ble High Court, Bombay has held that-period of delay is a factor to be considered while considering a delay condonation application; but more importantly it is the explanation for the delay which is relevant. In the instant matter it is clearly evident that the explanation for the delay submitted by the appellant is vague, non-coherent with the facts on record, inconsistent and self-contradictory and without any basis and not backed by any specific details and evidences, as has been brought out above.

For condonation of delay the existence of "sufficient cause" is sine-qua-non and a condition precedent. But it is evident that the appellant's request for condonation of ADMITTED delay in filing of the present appeal is merely a bald and vague submission completely devoid of any specifics and supporting details and evidences. On the contrary it is non-coherent with the facts forthcoming from available records and also bears an

apparent vagueness, t inconsistency and self-contradiction and thus lacks merit to be considered acceptable as a' sufficient cause. Hence, by no stretch of imagination, it can be said that the appellant, in facts and circumstances of the present matter, has successfully discharged the statutory onus cast upon her in respect of the admissibility of delayed appeal-which is explicitly required in terms of the provisions of section 249(3) of the Act for a successful condonation thereof. Under such circumstances, the aforesaid appeal cannot be considered for admission in terms of provisions of section 249(3) and accordingly, it is DISMISSED as NOT ADMITTED, without any discussion on merits or any other aspect, in-limine.

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

6. The Id. AR before us contended that the delay before the Id. CIT(A) is effectively 164 days only. As per the Id. AR, certain period should be excluded while calculating the delay in filing the appeal on account of COVID 19 pandemic.

6.1 The Id. AR further submitted that the assessment order was received by the tax consultant viz., Shri Jayarama and he could not intimate to the assessee about the passing of assessment order. As such, the assessee came to know about the assessment order on receipt of letter from the ITO, Ward-1, Chikaballapur dated 31/10/2022 and thereafter, the assessee immediately filed the appeal dated 10/11/2022.

6.2 In view of the above, the Id. AR submitted that there was sufficient cause, which prevented the assessee in filing the appeal within the stipulated time and, therefore, the delay in the instant case deserves to be condoned. Besides the above, the Id. AR also prayed that the matter may be set aside to the AO after condoning the delay in filing the appeal before the Id. CIT(A) as there was no representation from the side of the assessee during the assessment proceedings on account of COVID -19 pandemic.

7. On the other hand, the Id. DR submitted that the assessee failed to bring any cogent material indicating that there was sufficient cause which prevented the assessee to file the appeal within the stipulated time. The Id. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. It is the settled position of law by the judgment of Hon'ble Supreme Court vide order dated 09/05/2022 in the SLP bearing No. 2522/2022 in the case of Babasaheb Raosaheb Kobarne & ANR Vs. Pyrotek India Private Limited has directed to exclude the period from 15-03-2020 till 28-02-2022 and further period of 90 days for the purpose of limitation. The relevant extract of the judgment is reproduced as under:

"In that view of the matter, the period from 15.03.2020 till 28.02.2022 shall have to be excluded for the purposes of limitation as may be prescribed under any General or SPECIAL LAWS in respect of all judicial or quasi-judicial proceedings. The Commercial Courts Act, 2015 being a Special Law, the said order shall also be applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also."

XX

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

8.1 After taking into account the period to be excluded in view of the above judgment, the effective delay in filing the appeal is 164 days, and not 541 days as alleged by the Revenue. It was also submitted that the assessment order was served at the email. id of the tax consultant who

could not intimate to the assessee on account of change in the address of the assessee. Thus, considering all the facts discussed above, we are of the view that there was sufficient cause which prevented the assessee from filing the appeal within the stipulated time. Accordingly, we hold that it is a fit case for condonation of the delay in filing the appeal and thus, we hold so.

8.2 Before parting, we also note that it is the ex-parte assessment framed by the AO on account of non-cooperation from the side of the assessee. But undisputedly, the assessment was framed dated 19/04/2021, which falls during the period of COVID-19 pandemic where Hon'ble Supreme Court has condoned the delay. Thus, we are of the view, in the interest of justice and fair play, that the matter could be remanded back to the file of the AO for fresh adjudication as per the provisions of law and thus we direct so. Hence, the ground of appeal raised by the assessee is hereby allowed for statistical purposes.

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

Order pronounced in court on 18th day of June, 2024

Sd/-

(GEORGE GEORGE K)
Vice President

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore,
Dated, 18th 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