

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

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| ITA No.662/Bang/2024 |
| Assessment Year: 2017-18 |

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| M/s. Mobile Corner C/o Suresh Rayaraddi 3&4, Preeti Asiana Apartments Shirur Park, Vidya Nagar Hubli 580 021. PAN NO : AALFM1719P | Vs. | ITO Ward-1(1) Hubli |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Sri Rajeev C. Nulvi, A.R. |
| Respondent by | : | Ms. Neha Sahay, D.R. |

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| Date of Hearing | : | 25.06.2024 |
| Date of Pronouncement | : | 25.06.2024 |

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 16.2.2024. The assessee raised following grounds of appeal:

- 1. “The orders of the authorities below are against the fact and circumstances of the case.*
- 2. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in treating the cash deposits as unexplained money u/s 69A of the Income Tax Act, 1961, as all the deposits in the bank account cannot and shall not be the income of the Appellant's firm.*
- 3. On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in taxing the cash deposits u/s 69A and applying the tax rate as per section 115BBE, as the said deposits belonging to sales of proprietary concern of one of the partners and his wife.*

4. *On the fact and circumstances of the case and under the provisions of the law, the Assessing Officer erred in taxing the cash deposits in the bank account of the firm u/s 69A as unexplained money, as the said cash deposits were not real income of the firm but transactions of proprietary concern made with the intention to keep the OD Account in operation to avoid to recall of the OD credit.*
5. *On the fact and circumstances of the case and under the provisions of the law, the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi erred in dismissing the appeal of the Appellant firm in lamine without condoning the delay of 224 days even after perusing the written submission, and upon which, had called for the remand report from the Jurisdictional Assessing Officer.*
6. *For these and other reasons which may be adduced at the time of hearing the Appellant prays before Your Honour to delete the addition made by the Assessing Officer u/s 69A or Your Honour may pass any such other order as deemed fit for the substantial cause of justice.*
7. *The appellant craves leaves to add, to alter, to amend and to delete any other ground at the time of the hearing.”*

2. Facts of the issue are that the appeal was filed belatedly before NFAC by 224 days. The assessee explained the delay by filing an affidavit as follows:

1. *“From 2005 to 2013, the firm by the name M/s. Mobile Corner was in existence. In the said firm, I along with Mr. BASAVARAJ ANGADI were the partners.*
2. *On 01-04-2012, Mr BASAVARAJ ANGADI decided to retire from the firm and I decided to admit my wife Smt SUNANDA SURESH RAYARADDI as a partner of the firm. Accordingly, the reconstitution deed of the partnership was drafted, to give effect to the reconstitution of the deed of the partnership from 01-04-2012. But unfortunately, Mr BASAVARAJ ANGADI didn't sign the reconstitution deed of the partnership and his account was not settled and also left he firm without intimating me. After waiting nearly seven months, he didn't turn up for participation in the business or sign the reconstitution deed of the partnership firm. I finally decided to deregister the firm under the K.VAT Act, 2003. Accordingly, the firm M/S Mobile Corner was deregistered and the firm was closed.*

3. *After the deregistration and the closer of the firm, I started my proprietary concern under the name and style of M/S TV Corner and also started proprietary concern in the name of my wife Snot SUNANDA SURESH RAYARADDI under the name and style of M/S SURSUN ENTERPRISES. Both are proprietary concerns and regularly filing the return of income from the assessment year 2014-15 to till date.*
4. *Without having the knowledge of the repercussions of not intimating the closer of the firm to the income tax department and Banker. I used the firm's bank account held with ICICI Bank for depositing the cash and other receipts and also from that Bank account made the payment to the third parties. All the said transactions are routed through the bank account of M/S Mobile Corner and were related to my proprietary concern M/s. TV Corner and the proprietrix concern of my wife M/S SURSUN ENTERPRISES. The said routing of transactions through the M/S Mobile Corner was done only with the intention to keep the OD limit alive, which was availed in the name of the firm from the ICICI Bank to avoid recalling of OD limit immediately and the closing of the said loan.*
5. *The transactions of the proprietary concern were routed through the Bank account of the firm M/S Mobile Corner only to show the banker that the account is in operation. But in fact, no transaction is in the name of the firm M/S Mobile Corner carried out with effect from 04-11-2013.*
6. *No income or receipts or turnover were received in the name of the firm M/s-Mobile Corner during the financial year 2016-17.*
7. *There was a 224 delay in filing the appeal. The said delay was due to the reason that until 27-10-2022, I was unaware of the passing of the order u/s 144 r.w.s 147 r.w.s 144B dated 30-03-2022 and also order u/s 271AAC(1) dated 30-09-2022, only after having the knowledge of passing the order, I approached my tax consultant, who was busy in the tax audits and income tax filing in the month of October and November 2022. Only in the month of December 2024; the tax consultant took me to Bangalore, after his busy schedule to approach the CA for filing the appeal. The CA filed the appeal on 10-12-2022 after having full knowledge of the fact of the case. Hence there was a 224 days delay in filing the appeal, which, is beyond my control as I have the knowledge of the passing of the Order belatedly.*

The above statement is true and correct to the best of my knowledge and belief and made in good faith.”

2.1 The NFAC dismissed the appeal without condoning the delay. Against this assessee is in appeal before us.

2.2 Before us, ld. A.R. filed additional evidences along with a petition for admission of additional evidences as follows:

1. *Partnership Deed dated 30/06/2003.*
2. *Unsigned Reconstituted Deed of Partnership dated 01/04/2012.*
3. *K VAT Registration Certificate dated 23/01/2007.*
4. *K VAT De-registration Certificate dated 04/11/2013.*
5. *Extract Statement of Cash Deposits and Cash Withdrawals.*
6. *Extract Statement of Amount transferred from TV Corner to Mobile Corner.*
7. *Extract Statement of Amount transferred from Sursun Enterprises to Mobile Corner.*
8. *Extract Statement of interest charges paid by Mobile Corner.*
9. *Extract Statement of Bank interest charges paid by Mobile Corner.*
10. *Bank Statement of Mobile Corner in ICICI Bank vide CA No. 015705003938.*
11. *ITR, Computation Statement and Financial statements of Mobile Corner filed for the A. Y 2013-14.*
12. *ITR, Computation Statement and Financial statements of Mr. SURESH RAYARADDI filed for the A. Y 2017-18.*
13. *ITR, Computation Statement and Financial statements of Mrs. SUNANDA SURESH RAYARADDI filed for the A. Y 2017-18.*

2.3 Further, ld. A.R. pleaded that these additional evidences may be admitted so as to condone the delay as these documents would explain that there was a reasonable cause for filing the appeal belatedly before NFAC as the assessee was defunct during this period.

3. The ld. D.R. strongly opposed the admission of additional evidences.

4. We have heard the rival submissions and perused the materials available on record. These additional evidences are very necessary to decide the issue of delay in filing the appeal before NFAC. It was submitted by ld. A.R. that due to inadvertence the assessee failed to produce these additional evidences before NFAC on earlier occasion. Hence, in the interest of justice, we admit these additional evidences as the assessee's explanation is bonafide.

4.1 After admitting the additional evidences, since these additional evidences are filed for the first time before the Tribunal and the NFAC

have no occasion to consider these documents, hence, to dispense the justice, we remit the issue relating to condonation of delay to the file of NFAC to decide the same in the light of above documents. Thereafter, the NFAC decide the issue on merit, if situation warrants. Ordered accordingly.

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

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

Sd/-
(Prakash Chand Yadav)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 25th June, 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.