

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

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

ITA No.778 & 779/Bang/2024
Assessment Years : 2018-19 & 2020-21

Doddamane Anand Basappa, II Pania Estate, Madapura Road, Suntikoppa, Kodagu-571 237.  <b>PAN – AABHD 9106 K</b>	Vs.	The Income Tax Officer, Ward – 1, Madikeri.
APPELLANT		RESPONDENT

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

Date of hearing	:	06.06.2024
Date of Pronouncement	:	16.07.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

Both these appeals filed by the assessee are against the order passed by the NFAC, Delhi dated 06/03/2024 in DIN No. ITBA/ NFAC/ S/ 250/2023-24/1062101853(1) and vide dated 26/02/2024 in DIN No. ITBA/ NFAC/S/250/2023-24/1061519070(1) for the assessment years 2018-19 and 2020-21 respectively.

***First, we take up ITA No. 778/Bang/2024, an appeal by the assessee for the AY 2018-19.***

2. At the outset, we note that there was a delay in filing the appeal by the assessee for 418 days before the Id. CIT(A), which was not condoned by him. Accordingly, the appeal filed by the assessee was dismissed as not maintainable by the Id. CIT-A. However, we note that the assessment order was passed dated 8/4/2021, whereas the appeal was filed dated 31/5/2022 after a gap of 418 days. At this juncture it is to note that the delay in filing the appeal by the assessee is attributable to the COVID period and, therefore, the same should be excluded while calculating the limitation period in filing the appeal in view of the judgment of Hon'ble Supreme Court of India in the case of Cognizance for Extension of Limitation, In re reported in 134 taxmann.com 307 wherein it was held as under:-

- I. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand 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.*
- II. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.*
- III. 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.*
- IV. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*

3. From the above judgment, there remains no doubt that the time limit of filing the appeal from 15/3/2020 till 28/2/2022 should be excluded. After exclusion of such time, the Hon'ble Supreme Court has granted further time of 90 days for necessary compliances. Thus, from the above details, it is revealed that the time limit for filing the appeal expired in the month of May 29, 2022, whereas the appeal has been filed dated 31/5/2022 with the effective delay of 2 days only. As such, we note that the delay should have been condoned by the Id. CIT(A) in pursuance to the direction of Hon'ble Supreme Court stated above. Hence, we condone the delay in filing the appeal before the Id. CIT-A.

4. It is also noticed that the assessee has also failed to appear during the assessment proceedings. However, we note that the notices u/s 142(1) were issued by the AO for necessary compliances during the COVID period i.e. 17/11/2020 to 28/1/2021. Thus, we are of the view that there was a reasonable cause for non-appearance/ non-compliance during the assessment proceedings for the notices issued by the AO. Accordingly, we find that it is a fit case to be set aside to the file of the AO for fresh adjudication as per the provisions of law. Accordingly, we direct so. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

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

***Coming to ITA No. 779/Bang/2024, an appeal by the assessee for the AY 2020-21.***

5. In the present case, there was a delay in filing the appeal by the assessee before the Id. CIT(A) for 145 days, which was explained by the assessee on medical grounds but the same was not corroborated by the cogent materials. Therefore, the Id. CIT(A) dismissed the appeal filed by the assessee and held that the same is not maintainable.

6. However, the Id. AR for the assessee before us has filed medical reports suggesting that the assessee was suffering from the illness which are available on record and, therefore, he submitted that it is a fit case where the delay in filing the appeal deserves to be condoned. Likewise, the Id. DR after considering the details did not oppose on the condonation petition filed by the assessee. After hearing both the sides and the materials available on record, we deemed it fit to condone the delay in filing the appeal by the assessee before the Id. CIT-A.

7. It is also noticed that the assessee has also failed to appear during the assessment proceedings. Accordingly, the AO has passed the ex-parte order. The controversy arises whether the appeal should be set aside to the Ld. CIT-A or the AO for fresh adjudication. In this regard we note that if the appeal is set aside to the Id. CIT-A, then he has to call for the remand report from the AO on the documents to be filed by the assessee in support of his claim. Thus, in such a situation, we, in the interest of justice and fair play are inclined to restore the issue to the file of the AO for fresh adjudication. It is also directed that the assessee should cooperate during the proceedings before the AO and make necessary compliance. In view of the above, accordingly, we direct so. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

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

9. In the combined result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in court on 16<sup>th</sup> day of July, 2024

Sd/-

**(GEORGE GEORGE K)**  
Vice President

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore,  
Dated, 16<sup>th</sup> July, 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