

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, Accountant Member  
&  
Shri Prakash Chand Yadav, Judicial Member**

ITA No.1146/Bang/2024: Asst.Year : 2013-2014

M/s.Bannari Constructions No.4 Girdarshini Layout T N Pura Road, Alanahally Mysuru – 570 001. <b>PAN: AAKFB2209C.</b>	vs.	The Assistant Commissioner of Income-tax, Circle 2(1) Mysuru.
(Appellant)		(Respondent)

Appellant by: Smt.Sunaiana Bhatia, CA  
Respondent by: Ms.Neha Sahay, JCIT-DR

Date of Hearing : 16.07.2024	Date of Pronouncement: 19.07.2024
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**ORDER**

**Per Prakash Chand Yadav, JM :**

The present appeal of the assessee is arising from the order of the learned CIT(A) dated 28<sup>th</sup> April, 2023 having DIN & Order No.ITBA/NFAC/S/250/2023-24/1052429153(1) for assessment year 2013-2014.

2. Present appeal is delayed by 350 days. The counsel for the assessee has drawn the attention of Bench towards the affidavit of the partner and argued that the main accountant of the assessee, namely Bhaskar B, who was handling the taxation affair has expired in July 2021. It has further been contended that the newly appointed accountant also suffered covid-19 attack and hence the delay happened may kindly be condoned.

3. Ld DR strongly opposed the condonation application and argued that the appeal of the assessee is required to be dismissed as bared by limitation.

4. After considering the rival submissions we are of the view that it is settled position of law that unless mala-fide writ large the delay in filing appeals should ordinary be condoned as held by the Apex Court in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC). Keeping in view the reasons mentioned by assessee in the condonation application supported with affidavit, we hereby condone the delay happened in filing of the present appeal. Now we adjudicate the present appeal.

3. The facts leading to the present appeal are that the assessee is a partnership firm, filed its return of income on 28<sup>th</sup> September, 2013 declaring an income of Rs.7,29,300. Thereafter, the case of the assessee was selected for scrutiny and notices were issued to the assessee. However, somehow, the notices remained un-complied with and the Assessing Officer (AO) framed the assessment *ex parte*.

3. Aggrieved with the order of the AO, the assessee filed an appeal before the learned CIT(A). In the statement of Facts(SOF), the assessee pointed out that the partner of the assessee firm had appeared before the AO and had also produced the books of account. It was also pointed out in the SOF before the CIT(A) that the AO had retained the books of assessee and has never returned the same to the assessee. The ld.CIT(A) observed that despite the issuance of five notices neither any one appeared on behalf of assessee nor any

submissions were filed by the assessee in response to these notices. The Id.CIT(A), ignoring the provisions of section 250(6) of the Income-tax Act, 1961, the CIT(A) dismissed the appeal of the assessee for want of prosecution.

4. Now the assessee has come up in appeal before us. The Counsel for the assessee, at the outset, submitted that the matter may kindly be restored to the file of the AO for fresh adjudication in the interest of justice.

4. The learned Departmental Representative supported the orders of the authorities below.

5. After considering the rival submissions and perusing the material on record, we observe that the Id.CIT(A) though mentioned that he has issued five notices, yet failed to point out whether any notice of hearing was actually served upon the assessee or not. The Id.CIT(A) has also overlooked the provisions of section 250(6) of the Act, which provision mandates that it is the abundant duty of the Id.CIT(A) to decide each and every ground of appeal and he cannot dispose of the appeal *in limine*. We further observe that in this case certain facts are required to be investigated at the end of AO. Therefore, in the interest of justice, we remit this matter to the file of the AO for fresh adjudication in accordance with law. Needless to say, the AO will provide proper opportunity of being heard to the assessee in the set aside proceedings.

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

**Order pronounced in the open court on 19<sup>th</sup> July, 2024.**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

**Sd/-**  
**(Prakash Chand Yadav)**  
**Judicial Member**

Bangalore; Dated: 19<sup>th</sup> July, 2024  
Devadas G\*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(A) Concerned.
4. The DCIT concerned.
5. The Sr. DR, ITAT, Bangalore.
6. Guard File.

Asst.Registrar  
ITAT, Bangalore