

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1089/Bang/2024</b>
<b>Assessment Year : 2017-18</b>

Ms. Bijadi Vitta Geetha, # 2856, Gandhinagar, 1 <sup>st</sup> Cross, Shiralkoppa, Karnataka – 577 428. <b>PAN: BSUPG8856K</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2, Shivamogga.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Varun Bhat, CA
Revenue by	:	Shri Ganesh R Ghale, Advocate, Standing Counsel for Revenue

Date of Hearing	:	27-06-2024
Date of Pronouncement	:	11-07-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order passed by NFAC, Delhi dated 24.11.2023 for A.Y. 2017-18.

**2.** At the outset, the Ld.AR submitted that, there was delay of 126 days in filing the appeal before the *Tribunal*. The Ld.AR filed an affidavit of assessee dated 04.06.2024, wherein it is stated that, the email ID and the mobile no. reflecting in the portal of

Income Tax pertained to income tax practitioner being the assessee's representative, who did not notice the issuance of notice for hearing. The Ld.AR submitted that, it is only when the assessee received the notice of demand that it realized regarding the orders having passed and immediately took necessary steps to file the present appeal.

**3.** The Ld.AR submitted that, the only issue based on which the addition is made is regarding the cash deposits of Rs. 28,02,500/- made in SBN during demonetization period on various dates. It is submitted that upto 14.11.2016, the cash deposited amounting to Rs. 17,28,000/- was only taken into consideration by the Ld.CIT(A) and the balance cash made after 14.11.2016, was added as unexplained cash credits u/s. 68 of the act by the Ld.AO which was upheld by the Ld.CIT(A).

**4.** He submitted that assessee was not aware of the appellate order being passed and therefore there is a reasonable cause in the delay caused to file the present appeal before this *Tribunal*.

**5.** On the contrary, the Ld.DR though vehemently opposed the condonation submitted that no affidavit has been furnished of the alleged consultant in support of the contentions of the assessee.

**6.** We have perused the arguments advanced by both sides. We note that in form 35, the email ID that is provided is [bvrcli49@gmail.com](mailto:bvrcli49@gmail.com) and the email address mentioned in Form 36

is different. There is nothing on record filed by the Ld.DR to substantiate that the email ID mentioned in form 35 belongs to the assessee.

**7.** In any event, though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

**8.** I take support from the observations of Justice Krishna Iyer wherein he has quoted at various occasion while dealing with technicalities that *“any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural technicalities”*. Even *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles. Respectfully following the thoughts propounded by Late *Hon’ble Justice Krishna Iyer*, as well as various decisions of *Hon’ble Supreme Court* on similar issues, I condone the delay caused in filing the present appeal before this *Tribunal*.

Accordingly, the appeal stands admitted.

**9.** On merits, the issue is regarding addition made u/s. 68 of the SBN notes during the demonetisation period deposited by the assessee after 14.11.2016. It is noted that the authorities below has not considered the following CBDT Circulars.

- a) The 1<sup>st</sup> instruction was issued on 21/02/2017 by instruction number 03/2017.
- b) The 2<sup>nd</sup> instruction was issued on 03/03/2017 instruction number 4/2017.
- c) The 3<sup>rd</sup> instruction was in the form of a circular dated 15/11/2017 in F.No. 225/363/2017-ITA.II and the last one dated 09/08/2019 in F.no.225/145/2019-ITA.II.

Accordingly, I remand the issue back to the Ld.AO to carry out necessary verification having regard to the evidences furnished by the assessee.

Needless to say that proper opportunity of being heard must be granted to assessee.

**Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 11<sup>th</sup> July, 2024.**

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 11<sup>th</sup> July, 2024.  
/MS /

Copy to:

1. Appellant
3. CIT
5. Guard file

2. Respondent
4. DR, ITAT, Bangalore
6. CIT(A)

By order

Assistant Registrar,  
ITAT, Bangalore