

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.866/Bang/2024
Assessment year : 2013-14

Sri Suresha Chikkajala Ramakrishnappa, 81, Stone Building, Chikkajala Post, Chikkajala, Bangalore – 562 157. PAN : BADPS 0728K	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Narendra Sharma, Advocate
Respondent by	:	Shri Sunil Kumar Agarwal, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.06.2024
Date of Pronouncement	:	31.07.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against order dated 25.03.2024 of the CIT(Appeals)-15, Bangalore, for the AY 2013-14 challenging the ex-parte order for not condoning the delay in filing

appeal and further contesting the assessment completed u/s. 153C of the Act.

2. Briefly stated the facts of the case are that the assessee filed return of income u/s.139 on 01.05.2014 declaring income at Rs.2.22 crores. Assessment was completed u/s. 143(3) of the Act on 31.03.2016. Pursuant to search conducted in the case of Mr. Ramanna Ashwathappa on 07.03.2019, after recording satisfaction note, the AO issued notice u/s. 153C. Accordingly assessee filed return on 31.03.2021 in pursuant to notice u/s 153C of the I. T. Act and declared total income of Rs.4,52,94,330. Subsequently statutory notices were issued to the assessee and AO completed assessment on 30.07.2021. Against the above assessment order, the assessee filed first appeal on 20.11.2022.

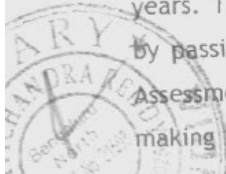
3. The Id. CIT(Appeals) noted that the appeal filed by the assessee is beyond the provisions of section 249 and it is delayed by 265 days and after considering the submissions of the assessee which are reproduced in his order regarding condonation of delay and relying on various judgments, he did not condone the delay in filing appeal and dismissed the appeal without going into the merits of the case. Aggrieved from the said order, the assessee filed appeal before the ITAT.

4. The Id. AR reiterated the reasons for condoning the delay taken before the CIT(A) and he has filed an affidavit before us in this regard dated 11.6.2024 which is as under:-

AFFIDAVIT:

I, SURESHA CHIKKAJALA RAMAKRISHNAPPA, aged about 52 years, S/o. Sri. Ramakrishnappa, residing at No. 81, Stone Building, Chikkajala Post, Chikkajala Post, Bengaluru - 562 157, do hereby state, confirm and affirm under oath as follows:

1. I, state that, I am the Appellant, in the present Appeal filed for the Assessment year 2013-14 against the order passed by the learned Commissioner of Income-tax [Appeals]-15, Bengaluru, dated 25/03/2024 and I am conversant with the facts of the present case and I am competent to swear to this affidavit.
2. That I am an individual assessee and deriving income from real estate business. For the Assessment Year 2013-14, which is under consideration before this Hon'ble Tribunal, I had filed my original return of income on 01/05/2014.
3. That, the return of income filed by me was selected for scrutiny and an order of assessment under section 143 [3] of the Act was passed by the then learned assessing officer on 31/03/2016.
4. That, thereafter, an alleged action of search was carried under the provisions of section 132 of the Act in the case of one Sri. Ramanna Ashwathappa on his residential premises on 07/03/2019 and certain alleged documents pertaining to me were found and seized.
5. That, my matter was centralized vide order dated 11/02/2021. Subsequently, the learned Assistant Commissioner of Income-tax, Central Circle - 2[4], Bengaluru, issued notices under section 153C of the Act for the Assessment Years 2013-14 and also for the other subsequent assessment years. Thereafter, the learned assessing officer concluded the assessment by passing an order of assessment under section 153C of the Act for the Assessment Year 2013-14, vide order of assessment dated 30/07/2021, after making certain additions and thereby determined the total income at Rs.

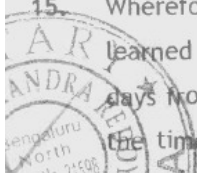


4,53,21,961/-. The impugned order of assessment passed under section 153C of the Act dated 30/07/2021 were served on me on 02/08/2021.

6. That, soon after the receipt of the order of assessment passed by the learned assessing officer dated 30/07/2021 for the assessment years 2013-14 and other assessment years the same were handed over to the counsel Sri. Manjunath Hegde, Chartered Accountant, for guiding me as regard to the next course of remedy available. The said counsel suggested me to file a statutory appeal as per the provisions of section 246A of the Act, before the learned Commissioner of Income-tax [Appeals].
7. That, after the suggestion received from the said counsel i.e. Sri. Manjunath Hegde, I had requested him for preparation and filing of appeals since I am not conversant with the tax laws are concerned.
8. That, the said counsel i.e. Sri. Manjunath Hegde, prepared the appeal papers for the other Assessment Years and inadvertently omitted to file statutory appeal under section 246A of the Act for the impugned assessment Year 2013-14 by oversight.
9. That, it is submitted that when I had sought professional guidance as regard to the appeals filed before the learned Commissioner of Income-tax [Appeals], from another professional, then the said professional after going through the entire files and records and also the income-tax e-portal, he noticed that no statutory appeal has been preferred for the impugned assessment year 2013-14 and asked the reason for not filing statutory appeal for the impugned assessment year 2013-14.
10. That, I informed the said professional that I was not aware of the nuances of the Income-tax Act, and was acting upon the guidance of Sri. Manjunath Hegde, and thus was not aware of non-filing of statutory appeal for the impugned assessment year 2013-14.

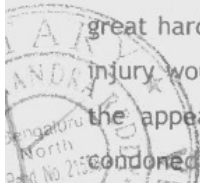


11. That, thereafter the said professional prepared the appeal papers for the impugned assessment year 2013-14 immediately and filed the appeal on 20/11/2022.
12. It is submitted that the order of assessment passed by the learned assessing officer under section 153C of the Act dated 30/07/2021, was served on me only on 02/08/2021. As per the provisions of the Act, the statutory appeal ought to have been filed within 30 days from receipt of the impugned order i.e. the order of assessment was received on 02/08/2021 and I ought to have filed the appeal under 246A of the Act on or before 01/09/2021. However, the said appeal was filed only on 20/11/2022 for the reasons mentioned above, resulting in a total delay of about 445 days [i.e. the delay in filing from 01/09/2021 till 20/11/2022].
13. It is further submitted, as per the order of the Hon'ble Supreme Court in Suo Moto Writ Petition [Civil] No.3 of 2020 vide its judgment dated 27/04/2021 extended the period of limitation from 15/03/2020 till 28/02/2022 the delay need not be considered i.e. about 190 days [i.e. from 01/09/2021 till 28/02/2022] need not be considered for the purposes of limitation. Thus, the delay in filing the statutory appeal before the learned Commissioner of Income-tax [Appeals], would be around 255 days [i.e. 445 days minus 190 days].
14. It is submitted further that in the said judgment of the Hon'ble Apex Court dated 27/04/2021 [supra] had given another grace period of 90 days from 01/03/2022 till 29/05/2022. If the said 90 days are excluded for the purpose of limitation then the actual delay in filing the statutory appeal before the learned Commissioner of Income-tax [Appeals] would be around 165 days [i.e. 445 days minus 190 days minus 90 days].
15. Wherefore, in view of the above fact, I could not file the appeal before the learned Commissioner of Income-tax [Appeal], well in time i.e., within 30 days from the date of receipt of order i.e., on or before 01/09/2021 and by the time I preferred statutory appeal before the learned Commissioner of



Income-tax [Appeals], there arose a delay in filing the statutory appeal under section 246A of the Act.

16. It is submitted that the learned Commissioner of Income-tax [Appeals]-15, Bengaluru, without properly appreciating the bonafide reasons and reasonable cause for not filing the statutory appeal under section 246A of the Act, within 30 days, declined to condone the delay in filing the appeal and refused to adjudicate the appeal on merits of the matter, vide appellate order dated 25/03/2024, which is against the principles of natural justice.
17. It is humbly prayed that this Hon'ble Tribunal considering the overall facts which actually was a cause for delay in filing the appeal before the learned Commissioner of Income-tax [Appeals], humbly request to take a lenient and compassionate view and condone the delay in filing the statutory appeal before the learned Commissioner of Income-tax [Appeals]-15, Bengaluru and direct the learned Commissioner of Income-tax [Appeals]-15, Bengaluru to hear the appeal filed by me on merits for the advancement of substantial cause of justice.
18. The learned Commissioner of Income-tax [Appeals]-15, Bengaluru, further failed to appreciate that the statutory appeal under 246A of the Act within time is not deliberate or intentional and by not filing the said appeal under 246A in time will not gain any benefit and for the reasons as stated above I could not file the present appeal within the stipulated time which fact was not properly appreciated by the learned Commissioner of Income-tax [Appeals].
19. It is humbly submitted that if delay in filing the appeal before the learned Commissioner of Income-tax [Appeals] is not condoned, I will put me into great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent / Revenue if the delay in filing the appeal before the learned Commissioner of Income-tax [Appeals] is condoned by this Hon'ble Tribunal. Reliance is placed on the decision of the



Hon'ble Apex Court in the case of **Collector, Land Acquisition Vs. MST. Katiji and Others** [1987] 167 ITR 471 and also in the case of **Concord of India Insurance Co. Ltd., Vs. Smt. Nirmala Devi and Others** 118 ITR 507. Further the Appellant relies on other decisions of the Hon'ble Apex Court in the case of **Radha Krishna Rai Vs. Allahabad Bank & Others** [2009] 9 SCC 733; and another decision of the Hon'ble Apex Court in the case of **Ram Nath Sao alias Ram Nath Sahu & Others Vs. Gobardhan Sao & Others**, reported in [2002] 3 SCC 195 and another decision of the Hon'ble Apex Court in the case of **CIT Vs. West Bengal Infrastructure Development Finance Corporation Limited** [2011] 334 ITR 269 [SC].


Wherefore I, once again humbly pray before this Hon'ble Tribunal to kindly consider the submissions and reasons given for delay in filing the appeal before the learned Commissioner of Income-tax [Appeals] and I humbly pray before this Hon'ble Tribunal to condone the delay in filing the statutory appeal under section 246A of the Act before the learned Commissioner of Income-tax [Appeals] of about 165 days in filing and thereby a direction may kindly be given by this Hon'ble Tribunal to the learned Commissioner of Income-tax [Appeals] to hear the same on merits of the matter for the advancement of substantial cause of justice.

DATED THIS THE 11TH DAY OF JUNE, 2024 AT BANGALORE


Deponent

Sworn to before me

SWORN TO BEFORE ME 


G.M. KAVICHANDRA REDDY
B.Sc., LL.B., PGDIP & PM
ADVOCATE & NOTARY PUBLIC



5. Referring to the above affidavit and application filed before the CIT(Appeals) for condonation of delay, the Id. AR requested that the matter may be sent back to the CIT(Appeals) for fresh consideration and he undertook that assessee will comply all the notices for disposal of the case.

6. On the other hand, the Id. DR relied on the order of the CIT(A) and submitted that assessee has not explained properly the reasons for condoning delay in filing appeal to the satisfaction of the CIT(A) and objected for remitting the matter again before the CIT(A). The reasons stated are very casual reasons and this is a search case and assessee must be vigilant of the proceedings. Therefore the appeal should be dismissed.

7. Considering the rival submissions, we note that the delay in filing the appeal before the Ld.CIT(A) amounts to 165 days. However, on going through the submissions of the Ld.AR and the affidavit filed by the assessee along with the application for condonation of delay, the delay cannot be considered to be the one caused due to any malafide intention. In fact, we find the reason submitted by the assessee that caused the delay is a mistake on behalf of assessee at the personal level. We also note that, upon realising the mistake committed by the assessee's counsel, he immediately took necessary steps to represent his case before the authority. It is further emphasised that the assessee is not a continuous defaulter could also be attributed. This can be understood from the return filed in pursuant to notice issued u/s 153C

of the I T Act for the relevant AY that has been the basis for the demand. It is noted that for the relevant Assessment Year, assessee had offered income u/s 153C at Rs. 4,52,94,320/- and the AO has made addition only of Rs. 27,641/-. we note that the assessee did not file appeal within the prescribed time u/s. 249 (2) against the assessment order passed by the AO order dated 30.07.2021. The Id. CIT(Appeals) has not decided the issue on merits of the case and only dismissed the appeal without condoning the delay. In case of People Education & Economic Development Society Vs. ITO reported in 100 ITD 87 (TM) (Chen), it was held that;

"when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay".

8. The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of Hon'ble Madras High Court in the case of CH vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Hon'ble Madras High Court thus condoned nearly 21 years of delay in filing the appeal. As compared to

21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

9. Hon'ble Madras High Court in the case of Sreenivas Charitable Trust reported in 280 ITR 357 held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the Hon'ble Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by *Hon'ble Madras High Court* in the case of *Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

10. Hon'ble Mumbai Bench of this Tribunal in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT)* reported in 277 ITR 1 condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted

that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in *AIR 1978 SC 537* held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; *"It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. Condonation of delay is the discretion of the Court/ Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period.*

11. With the above observations, following the above judgments, in our considered opinion, there exists sufficient cause in the reasons stated by the assessee for the delay in filing appeals and we condone the delay in filing the appeal before the CIT(Appeals). The CIT(Appeals) is directed to decide the appeal afresh as per law. The assessee is directed to update its email id, communication address and other details and file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of

being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

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

Order pronounced in the open court on this 31st day of July, 2024.

Sd/-

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 31st July, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.