

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “A”, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member
&
Shri Keshav Dubey, Judicial Member**

ITA No.822/Bang/2024: Asst.Year : 2017-2018

Sri.Gomaram Choudhary Godaji Village Anadra Anjani Nivas Near Patwar Ghar, Tehsil Revor Dist, Sirohi Rajasthan– 307 511. PAN: AEYPC0258E.	vs.	The Assistant Commissioner of Income-tax, Circle 5(2)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by: Sri.Vishwa Padmanabhan, CA
Respondent by: Sri.Ganesh R.Gale, Standing Counsel

Date of Hearing : 30.05.2024	Date of Pronouncement: 31.07.2024
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ORDER

Per Keshav Dubey, JM :

This appeal at the instance of the assessee is directed against the order of National Faceless Appeal Centre, Delhi /CIT(A) dated 20.02.2023 vide DIN & order No. ITBA/NFAC/S/250/2022-23/1049935262(1) passed u/s.250 of the Income-tax Act, 1961 (“the Act”) for Assessment Year (AY) 2017-2018.

2. The assessee has raised the following grounds:-

“That the Ld. CIT(A) is not justified in dismissing the appeal of the appellant ex parte without hearing the appellant.

2. That the Ld. CIT(A) ought to have given one more opportunity to the appellant to explain his case.

3. Without prejudice to the above grounds, that the Ld. CIT(A) is not justified in sustaining the addition of Rs.20,00,000/- made by the Assessing Officer u/s.69 r.w.s 115BBE of the Act.

4. That the Ld. CIT(A) ought to have appreciated that the assessment order passed by the Assessing Officer is invalid on many counts.”

3. At the outset, the learned AR submitted that there is a delay in filing the appeal before this Tribunal by 377 days. The assessee has filed a petition for condonation of delay in filing the appeal belatedly in terms of sec.253(5) of the Income-tax Act, 1961, along with an Affidavit stating therein that the assessee has shifted from Bangalore to Rajasthan and there was no clue relating to the physical service of the appellate order. Further, the assessee in his Affidavit submitted that the financial affairs and tax compliance used to be handed by his brother, who had given his personal e-mail id in the e-filing portal. Since there was no talking terms with his brother due to personal differences, the assessee's brother never communicated either the receipt of the notice or the appellate order for the impugned assessment year, and accordingly, prayed to condone the delay in filing the appeal belatedly by 377 days. The learned AR of the assessee further submitted that the delay is unintentional and no benefit can be attributed to the assessee in filing the appeal belatedly. He thus prayed for condonation of the delay and requested to consider the issue raised by the assessee on merits in the interest of Justice.

4. On the contrary, the learned Departmental Representative though strongly objected to the granting of condonation of delay, but could not controvert the genuineness in causing the delay.

5. We have perused the details filed by the assessee to justify the delay and we are satisfied that there is no malafide intention with the assessee in filing the present appeal belatedly. Respectfully following the ratio laid down by the Hon'ble Supreme Court in case of Collector, Land Acquisition v. Mst.Katiji & Ors. Reported in (1987) 167 ITR 471 (SC), the delay caused in filing the appeal filed before this Tribunal stands condoned and the appeal is admitted for adjudication.

6. On the merits of the case, the learned AR submitted that the learned CIT(A) is not justified in dismissing the appeal of the assessee *ex parte* without hearing the assessee, and prayed for providing one more opportunity to the assessee to explain his case.

7. The learned DR, on the other hand, supported the orders of the authorities below.

8. We have heard the rival submissions and perused the material on record. We note that the assessment is completed u/s.143(3) of the Act, however, during the appellate proceedings, the first appellate authority although issued various notices on different dates but the assessee has not filed any submission in response to said notices. As per the submissions of the AR of the assessee, the notices were never served on the assessee as he has shifted his place from Bangalore to Rajasthan and also the notices which were sent to the e-mail id of his brother were not communicated by his brother due to personal differences.

9. Considering the submission of the learned AR of the assessee and in the interest of justice and fair play, we remit the matter to the file of the CIT(A) for fresh consideration and decision as per law after affording a reasonable opportunity of being heard to the assessee. The assessee is directed to produce all the necessary documents / records in support of his case and shall not seek unnecessary adjournment. In case of further default by the assessee, no leniency will be granted. It is ordered accordingly.

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

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

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

**Sd/-
(Keshav Dubey)
Judicial Member**

Bangalore; Dated: 31st 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