

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

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

<b>ITA No. 1193/Bang/2024</b>
<b>Assessment Year : 2016-17</b>

Shri Ramesh Kumar Kothari, PWD Contractor Kothari Builders, ChickBasthi Road, Hassan – 573 201. <b>PAN: ACYPR8528E</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 1 & TPS, Hassan.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Mahesh, Advocate
Revenue by	:	Smt. Neha Sahay, Addl. CIT (DR)

Date of Hearing	:	12-08-2024
Date of Pronouncement	:	13-08-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 26.02.2024 passed by NFAC, Delhi for A.Y. 2016-17.

**2.** At the outset, it is submitted by the Ld.AR that, the assessee could not appear before the Ld.CIT(A) and that the order passed by the Ld.CIT(A) is an ex-parte order.

**2.1.** It is also submitted by the Ld.AR that, the present appeal filed before this *Tribunal* is with a delay of 54 days and that the assessee has furnished the application for condonation of delay vide its affidavit dated 17/06/2024. It is submitted in the affidavit that though the assessee received the impugned order by the NFAC on 26.02.2024 through online portal, as the assessee was otherwise also in appeal before the Ld.CIT(A) for other assessment years, passing of an order for the year under consideration went unnoticed thereby causing the delay. He submitted that this is an inadvertent mistake on behalf of the assessee as the assessee has been regularly representing its case before the Ld.CIT(A) for A.Y. 2018-19. The Ld.AR thus prayed for the delay to be condoned as the assessee immediately took necessary steps to file present appeal before this *Tribunal*.

**2.2.** The Ld.DR though objected could not controvert that the delay in filing the appeals before the Ld.CIT(A) could not be attributable to the assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

**3.** From the submissions of assessee reproduced in the impugned order, there does not arise any malafide intention on behalf of assessee for not filing the present appeals before the Ld.CIT(A) in the period of limitation.

**3.1.** In our view, the assessee has made out reasonable cause for the delay caused in filing the appeals before the Ld.CIT(A). Nothing to establish any contrary intention was brought on record by the revenue before this *Tribunal*. In our opinion there is sufficient cause and reasonable cause to condone the delay of 112 days as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

**3.2.** We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

*"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*

*And such a liberal approach is adopted on principle as it is realized that :*

*1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*

*2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*

*.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”*

**3.3.** Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee.

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.

**Accordingly, we condone the delay in filing the present appeals before this Tribunal.**

**4.** It is noted that the Ld.CIT(A) has not decided the issue on merits as assessee did not appear before the Ld.CIT(A) for the notices issued. In the interest of justice, we remit the issue back to the Ld.CIT(A) to consider the claim of assessee in accordance

with law on merits. The assessee is directed to furnish all relevant documents in support of its claim which shall be verified by the Ld.CIT(A) in accordance with law.

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 13<sup>th</sup> August, 2024.**

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 13<sup>th</sup> August, 2024.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore