

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

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

<b>ITA Nos. 1306 &amp; 1307/Bang/2024</b>
<b>Assessment Years : 2015-16 &amp; 2017-18</b>

Shri Babulal, No. 1/2, 2 <sup>nd</sup> Cross, K V Temple Street, Sultanpet, Bengaluru – 560 053. <b>PAN: AHWPB4335L</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2(2)(4), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Smt. Sheetal, Advocate
Revenue by	:	Shri V. Parithivel, JCIT-DR


Date of Hearing	:	20-08-2024
Date of Pronouncement	:	23-08-2024



**ORDER**

**PER BENCH**

Present appeals arises out of order passed by NFAC, Delhi dated 31/12/2023 for A.Y. 2015-16 and 30/04/2024 for A.Y. 2017-18. At the outset, it is submitted that there is a delay of 131 days for A.Y. 2015-16 and a delay of 10 days for A.Y. 2017-18 in filing the appeals before this *Tribunal*.

**2.1.** The Ld.AR has filed affidavit of the assessee, explaining the delay which is as under:

 सत्यमेव जयते	<b>INDIA NON JUDICIAL</b>	
	<b>Government of Karnataka</b>	<i>AR</i> <i>20/8/24</i>
<b>e-Stamp</b>		
Certificate No.	:	IN-KA89755300730892W
Certificate Issued Date	:	19-Aug-2024 11:24 AM
Account Reference	:	NONACC (FI)/ kacrsf108/ SHANTHINAGAR/ KA-JY
Unique Doc. Reference	:	SUBIN-KAKACRSFL0831333222436290W
Purchased by	:	BABULAL
Description of Document	:	Article 4 Affidavit
Property Description	:	AFFIDAVIT
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	BABULAL
Second Party	:	THE INCOME TAX APPELLATE TRIBUNAL
Stamp Duty Paid By	:	BABULAL
Stamp Duty Amount(Rs.)	:	100 (One Hundred only)

Please write or type below this line

**BEFORE THE INCOME TAX APPELLATE TRIBUNAL,**  
**BENGALURU BENCH, BENGALURU**

**Sub: Request for Condonation of Delay under section  
of Income Tax Act, 1961 in filing Form No. 36 for  
Filing of Income Tax Appeal for the AY 2015-16,  
PAN: AHWPB4335L,**

Statutory Alert:  
1. The authenticity of this Stamp certificate should be verified at 'www.kylestamp.com' or using e-Stamp Mobile App of Stock Holding  
and Corporation Commission. In the absence of the Certificate and as available on the website / Mobile App readers it is void.

**AFFIDAVIT**

I, Babulal, s/o Modaram, do hereby solemnly affirm and state as follows:

I, Babulal, s/o Modaram resident of #354, A Ramanna street, Devaraja Mohalla, Mysore, Karnataka was not well and had to undergo bedrest as he was suffering with "Acute febrile illness-urinary tract infection with left side shrunken kidney" and could not sign the papers on time & appoint an advocate and file the appeal before the Hon'ble Tribunal.

In the circumstances, the delay is on account of bona fide circumstances and not on account of negligence on my part and the relief sought is again genuine and there was no suppression of income for justification of the impugned addition. Hence I humbly pray for condonation of the delay of 131 days in filing the appeal in view of the peculiar circumstance and facts narrated above and in the interest of justice.

Place- Bengaluru

Date- 19/08/2024


Identified by me  
**SHEETAL BORKAR**  
ADVOCATE  
**S & M LEGAL**  
Ranka Park Apartments, Richmond Circle B-6,  
Bangalore - 560 027. Phone : 08 -2224 3838



A handwritten signature in blue ink, appearing to be "Babulal".

Babulal

SWORN TO BEFORE ME  
19/08/2024  
C. VENKATAPATHY  
ADVOCATE & NOTARY  
# 002, Crescent Heights Apartment  
1st Cross, Snehnagar, Amruthahalli  
Sankara Nagar (Post)  
Bengaluru - 560092

 **CAUVERY**  
Heart & Multi-Specialty Hospital  
Caring for life

**Cauvery Heart & Multi  
Specialty Hospital, Mysuru**

---

Patient Name..... **Babulal** Date..... **16.03.2024**

Rx

**To whomsoever concern**

This is to certify that Mr. Babulal aged 50 years was admitted to this hospital from 15.02.2024 to 14.03.2024 as he was diagnosed of "Chronic Osteomyelitis secondary to Gouty arthritis of left great toe"

He is advised for complete bed rest and avoid any kind of work activities for 8 -10 weeks

Patient Identifier MYS IP No 11870

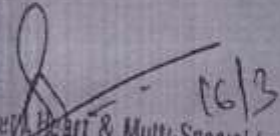
Babulal S/o Modaram

354, A Ramanna Street

Devaraja Mohalla

Mysore

Date 16.03.2024

  
Cauvery Heart & Multi-Specialty Hospital  
Teresian Circle, Siddartha Nagara,  
Mysore-570 029 Ph: 0821-2472424

---

Teresian Circle, Siddarthanagar, Mysuru - 570 029  
Phone : 0821 - 2472424  
email : info@cauveryhospital.org web : www.cauveryhospital.org

**2.2.** For A.Y. 2017-18 also, similar affidavit has been filed seeking condonation of 10 days delay caused in filing the appeal before this *Tribunal*.

**2.3.** The Ld.AR submitted that, the assessee was not keeping well and was admitted to the hospital from 15/02/2024 and was advised for bed rest. The assessee has also annexed the medical certificate of the doctor in support of the illness that he was suffering during the relevant period. The Ld.AR submitted that, the delay in filing the appeal before this *Tribunal* is unintentional and is due to the circumstances that prevailed, beyond the control of the assessee. She prayed for the delay to be condoned in filing both the appeals before this *Tribunal*.

**2.4.** On the contrary, the Ld.DR though objected for condonation could not controvert the prayer of the assessee.

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

**2.5.** From the submissions of assessee reproduced in the impugned order, we note that there does not arise any malafide intention on behalf of the assessee for not filing the present appeals before this *Tribunal* in the period of limitation.

**2.5.1.** In our view, the assessee has made out reasonable cause for the delay caused in filing the appeals before this *Tribunal*. Nothing to establish any contrary was brought on record by the revenue before this *Tribunal*. In our opinion there is sufficient and reasonable cause to condone the delay of 131 days for A.Y. 2015-16 and 10 days for A.Y. 2017-18 in filing appeals before this *Tribunal* 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.

**2.5.2.** We also 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."*

**2.5.3.** Considering the submissions of the assessee 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.

**Accordingly, the delay of 131 days for A.Y. 2015-16 and 10 days for A.Y. 2017-18 stands condoned.**

**3.** The Ld.AR on merits submitted that assessee could not file that sufficient evidence and supportive documents during the assessment proceedings. She submitting that for A.Y. 2015-16, the appeal was taken up for scrutiny to examine the following issues:

- 1) Mismatch in the amount paid to related persons u/s. 40A(2b) reported in the audit report and ITR.
- 2) Low profit shown by the transporters.
- 3) Large increase in the sundry creditors and reduction in the business income as compared to the preceding year.

And for A.Y. 2017-18, she submitted that, the scrutiny assessment was taken up for verifying the following:

- 1) Unsecured loans
- 2) Cash deposits during demonetisation period

**3.1.** She submitted that, the assessee could not furnish relevant details before the appellate authorities and prayed for an opportunity of being heard on the issues. She submitted that the assessee may also be given liberty to furnish necessary evidences in support of the claims which is verifiable.

**3.2.** On the contrary, the Ld.DR submitted that assessee during the assessment proceedings has not furnished any documents and therefore the additions has been made even before the Ld.CIT(A) assessee has failed to furnish evidences.

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

**4.** We note that though various notices were issued to the assessee, on ITBA portal, the same were not brought to the notice of the assessee because of which necessary steps could not be taken. In the interest of justice, without commenting anything on the merits of the issues in both the assessment years, we remit the appeals back to the Ld.AO to carry out a *denovo* assessment.

**4.1.** Assessee is directed to furnish all evidences / documents in support of its claim. The Ld.AO shall verify the documents and evidences in the light of the records and in accordance with law.

**4.2.** Insofar as the cash deposits during the demonetisation period is concerned, the Ld.AO shall verify the claim of assessee based on the applicable circular issued by the CBDT to the facts of this case.

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.

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

**Accordingly, the grounds raised by the assessee for both the years under consideration stands partly allowed for statistical purposes.**

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

**Order pronounced in the open court on 23<sup>rd</sup> August, 2024.**

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 23<sup>rd</sup> August, 2024.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore