

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “A” BENCH, BENGALURU**

**Before Shri Prakash Chand Yadav, Judicial Member
and
Shri Waseem Ahmed, Accountant Member**

ITA No. 1365/Bang/2024 (Assessment Year:2016-17)		
Late Smt. Nibgoor Hanumanthappa Ushanandini, L/R by Sri SM Venkatesha, Shop No.2, MK No. 342, Vinayaka Wine Stores, Mahantheshwara Road, Honnali Taluk, Davangere-577223 PAN – AARPU4962E (Appellant)	vs.	The Assistant Commissioner of Income Tax, Circle-2(1), Davangere (Respondent)
Assessee by:	Ms. Sunaiana Bhatia, CA	
Revenue by:	Sri. Ganesh R. Ghale, Standing Counsel	
Date of hearing:	22.08.2024	
Date of pronouncement:	27.08.2024	

ORDER

Per: Prakash Chand Yadav, J.M.

Present appeal of the assessee is arising from the order of Id. CIT(A) dated 20.06.2023 having DIN & order No. ITBA/NFAC/S/250/2023-24/1053822082(1) and relates to Assessment Year (AY) 2016-17.

2. There is a delay of 335 days in filing appeal before the Income Tax Appellate Tribunal. Explaining the reasons for delay, the counsel for the assessee has drawn the attention of Bench towards the affidavit filed by her legal heir placed in paper book at page no. 1 to 4. At the outset, counsel for the assessee submitted that the assessee expired on 29th November, 2019 and thereafter, the legal heir of the assessee was not checking the email-ID

provided by the assessee to the Income Tax Department for communication of notices and orders. Counsel further pointed out that the assessee came to know about the tax proceedings pending against the deceased on 28th June, 2024, when he received a call from Income Tax Department, intimating the dismissal of appeal by NFAC. Thereafter, the present legal heir after seeking advice of the professionals filed the present appeal before ITAT. In this backdrop Ld counsel submitted that there was a bona-fide reason behind the delay in filing of the present appeal and hence it is prayed that the delay may kindly be condoned.

3. Ld. DR appearing for the Revenue strongly opposed the prayer of the assessee for condonation of delay.

4. After considering the rival submission, we are of the view that there was a bona-fide reason behind the delay in the impugned appeal and hence we condone the delay and admit this appeal.

5. Facts leading to the filing of this appeal are that assessee is an individual, filed her return of income on 16.10.2016 declaring an income of Rs. 21,32,570/-. The case of the assessee was selected for scrutiny and accordingly statutory notices were issued to the assessee. During the course of assessment proceedings, the ld. AO observed that the assessee has incurred an amount of Rs. 28,60,000/- towards salary payments, consisting of salary, wages, bonus accounts etc. The AO called for the details of the payments made by the assessee. However, the assessee could not produce the supporting vouchers and hence the AO made a disallowance of Rs.13,04,713/-. The ld. AO has also made an addition of Rs. 2,05,225/- on the ground that there was a difference in cash balance shown in the bank.

6. Aggrieved with the order of AO, the assessee preferred appeal before the ld. CIT(A). During the course of appellate proceedings, the ld. CIT(A) has issued five notices of hearing to the assessee. Out of these five notices, three notices were pertaining to Covid-19 period and rest of the two notices were

issued in the month of April, 2023 and June, 2023. Thereafter, the Id. CIT(A) dismissed the appeal of the assessee for the want of prosecution.

7. Aggrieved with the order of Id. CIT(A), assessee filed the present appeal and contended that the matter may kindly be restored to the file of the AO/CIT(A) in the interest of natural justice.

8. The Id. DR relied upon the orders of the authorities below.

9. After considering the rival submissions, we observe that the Id. CIT(A) though has mentioned that he has issued six notices. However, the Id. CIT(A) failed to establish as to whether any notice of hearing was actually served upon the assessee. Furthermore, the assessee expired on 29th November, 2019 due to which the legal heir was not operating the email ID and hence there was a noncompliance of the notices of hearing before the First Appellate Authority.

10. Considering the facts and circumstances of the case, we are of the firm view that the matter requires fresh consideration at the end of AO for fresh adjudication. Needless to say that the Ld AO would provide meaningful opportunity to the assessee before deciding the appeal. The assessee is also directed to appear and comply with the notice of hearing before the AO.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27th August, 2024.

Sd/-

(Waseem Ahmed)
Accountant Member

Bengaluru, Dated: 27th Aug, 2024

Sh

Sd/-

(Prakash Chand Yadav)
Judicial Member

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bengaluru*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Bengaluru*