

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.1256/Bang/2024
Assessment Year: 2016-17

Kyalasanahalli Narayanappa Subramani CNo.40/1, Kothanur Post Kylasanahalli Bengaluru 560 077 PAN NO : ANBPS0920K	Vs.	ITO Ward-4(2)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Sri Siddesh Nagaraj Gaddi, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	06.08.2024
Date of Pronouncement	:	28.08.2024

O R D E R

PER SOUNDARARAJAN K., JUDICIAL MEMBER:

This is an appeal filed by the assessee challenging the order of the CIT(A)/NFAC dated 7.5.2024 in respect of the assessment year 2016-17.

2. The assessee is an individual aged about 52 years and doing agricultural activities. The AO made an assessment u/s 143(3) of the Income Tax Act, 1961 (in short “The Act”) by making an addition of Rs.75,44,398/- as an unexplained cash credit u/s 68 of the Act. Against the said proceedings, the assessee filed an appeal before Id. CIT(A) with a delay of 99 days. The Id. CIT(A) had dismissed the appeal on the ground of limitation and therefore, the present appeal has been filed by the assessee before us challenging the said order on the following grounds:


1. The impugned order passed by the Learned Assessing Officer is not justified in law and on facts and circumstances of the case;
2. The Learned AO has erred in law and on facts in making the addition of Rs. 75,44,398/- to the returned income of the Appellant under section 68 of the Act;
3. The CIT(A)/NFAC has erred in law and on facts in upholding the order of the Learned AO.
4. The Learned CIT(A) has erred in law and on facts in not appreciating that there was a reasonable cause in filing the appeal under section 246A belatedly.
5. The Learned CIT(A) has erred in law and on facts in passing the orders against the principles of natural justice.
6. The Learned AO has erred in law and on facts in not appreciating that bank statement is not considered as books of accounts. Therefore, any sum found credited in the bank passbook cannot be treated as an unexplained cash credit.
7. The Learned AO has erred in law and on facts in not considering the explanation of the Appellant with respect to cash deposits into his account; thereby the Learned AO has erred in law and on facts in ignoring submissions clearly justifying cash deposits;
8. Without prejudice to the above, the Learned AO has erred in law and on facts in not considering receipts from business as source of cash deposits;
9. The Learned AO has erred in levying interest under section 234A/B/C of the Act;
10. The Learned AO has erred in law and on facts in raising demand of Rs 33,49,239/- by issue of notice of demand under section 156 of the Act;
11. The Learned AO has erred in initiating penalty proceedings by issue of notice under section 274 read with section 271 and such other provisions of the Act;

(Total tax effect: Rs. 25,25,867/-)

3. At the time of hearing, the ld. A.R. filed a paper book by enclosing synopsis as well as the various hearing notices issued by the ld. CIT(A) and also copy of ITR filed by the assessee for the assessment year 2016-17. The ld. A.R. submitted that the assessee being an agriculturist and also not well educated, he was not well versed with the modern technology and therefore, he was not viewed the e-mails, SMSs, etc. The ld. A.R. further submitted that the ld. CIT(A) in his notice dated 27.9.2021 had condoned the delay in filing the appeal but while passing final order, he had rejected the appeal on the ground that the appeal was time barred. The ld. A.R. further stated that the assessee is having a good case on merits since the agricultural income earned by the assessee was shown in the return and therefore, he contended that further additions made u/s 68 of the Act is unwarranted.

4. The ld. D.R. relied on the orders of lower authorities and prayed to dismiss the appeal.

5. We have heard the rival submissions and perused the materials available on record. As rightly contended by the ld. A.R. in the notice dated 27.9.2021, DIN & Letter No.ITBA/NFAC/F/17/2021-22/1035926243(1), the ld. CIT(A) had given the following finding:

		भारत सरकार / GOVERNMENT OF INDIA		
		वित्त विभाग / MINISTRY OF FINANCE		
		आयकर विभाग / INCOME TAX DEPARTMENT		
		राष्ट्रीय पट्टान विहीन अपील केंद्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)		
		दिल्ली / DELHI		
To, KYALASANAHALLI NARAYANAPPA SUBRAMANI CNO.40/1, KOTHANUR POST, KYLASANAHALLI BENGALURU 560077,Karnataka India				
PAN: ANBPS09 20K	Assessment Year: 2016-17	Dated: 27/09/2021	Appeal No. CIT (A),Bengaluru- 4/10509/2019-20	DIN & Letter No. ITBA/NFAC/F/17/2021- 22/1035926243(1)
Sir/ Madam/ M/s, Subject: Condonation of Delay-reg				
This is with reference to the request for Condonation of delay in filing appeal made vide Sr.No 14 and 15 of Form 35 uploaded at the time of filing this appeal.				
The request for Condonation of delay in this case has been perused. Considering the period of delay in filing the appeal, the reasons given by the Appellant at Column no 15 of Form no 35 and taking into account the fact that the appellant has opted for DTVSV to end litigation and the fact that Form 3 has already been issued to the appellant, the delay in filing of appeal is condoned, placing reliance upon the decision of Hon'ble Apex Court in Collector, Land Acquisition Vs MST Katji and Others (167 ITR 471)(SC).				
Yours faithfully, Commissioner of Income Tax (Appeals) National Faceless Appeal Centre				
TRUE COPY 				
Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in .				
Signature Not Verified Digitally signed by: KUNAL SINGH Date: 2021.09.27 18:12:24 II				

5.1 As seen from the above said notice, the ld. CIT(A) had condoned the delay of 99 days in filing the appeal but strangely while deciding the appeal on merits, had dismissed the appeal on the ground of limitation. In our view, the order of the ld. CIT(A) is not correct since he had already condoned the delay and therefore, he has no authority to dismiss the appeal on the ground of limitation while passing the final order on 7.5.2024. Further, we have also considered the submission of the assessee to the effect that he being an uneducated person, has not verified the e-mails and therefore, he was not able to appear before the ld. CIT(A), seems to be a reasonable and acceptable one. In fine we have satisfied ourselves that the reasons stated by the assessee are a reasonable one and therefore, we are setting aside the order of ld. CIT(A) and remit the issue to the file of ld. CIT(A) for fresh consideration on merits after granting a personnel hearing.

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

Order pronounced in the open court on 28th Aug, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bangalore,
Dated 28th Aug, 2024.
VG/SPS
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.