

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.1507/Bang/2024
Assessment Year : 2020-21

Shri. Bhadraiah Kallenahalli Dinesha, 12, Kallenahally Village, Thiruganahalli Post, Honkere Hobli, Nagamangala Taluk Mandya – 571 432. PAN : BIBPD 0214 P	Vs.	ITO, Ward –1, Mandya.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Tharun Kothari, CA
Revenue by	:	Shri. V. Parithivel, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	17.09.2024
Date of Pronouncement	:	17.09.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the Order of CIT(A) dated 26.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2020-21.

2. At the very outset, we notice that CIT(A) has dismissed the appeal of the assessee *in limine* without condoning the delay of 2 months 3 days in filing the appeal before him. The CIT(A) stated that despite the notice issued under section 250 of the Act, assessee did not furnish any application for condonation of delay. The learned AR submitted that assessee omitted to file the delay condonation

application. The learned AR submitted that CIT(A) ought to have issued a defect notice before dismissing the appeal *in limine*.

3. Assessee has filed a Paper Book enclosing the affidavit explaining the reasons for belated filing of the appeal before the CIT(A), the Order of the ITAT in assessee's own case in the quantum assessment, the screenshot of reply submitted during the course of appellate proceedings, etc.

4. The learned AR submitted that the issue on merits i.e., imposition of penalty under section 271B of the Act is covered in favour of the assessee since assessee did not maintain any books of accounts. In this context, the learned AR relied on the Order of the Bangalore Bench of the Tribunal in the case of Maranaikanahalli Jayashella Shetty Pradeepkumar Vs. ACIT in ITA No.1136/Bang/2022 for Assessment Year 2017-18 (Order dated 30.03.2023) which had followed the Hon'ble Gauhati High Court judgment in the case of Surajmal Parsuram Todi Vs. CIT reported in (1996) 222 ITR 691 (Gau) and the judgment of Hon'ble Allahabad High Court in the case of CIT Vs. Bisauli Tractors reported in (2008) 299 ITR 219 (All.).

5. The learned DR submitted that the matter can be restored to the CIT(A) to consider the delay condonation application now filed before the Tribunal.

6. We have heard the rival submissions and perused the material on record. The CIT(A) dismissed the appeal of assessee *in limine* without condoning the delay of 2 months 3 days in filing the appeal before him. The CIT(A) has admittedly not issued defect notice drawing the attention of assessee that there is no condonation application filed. In the interest of justice and equity, we are of the view that assessee should be provided with an opportunity to explain the reasons for delay of 2 months and 3 days in filing the appeal before the CIT(A).

Accordingly, the issue raised in this appeal is restored the files of the CIT(A). The assessee is directed to furnish the affidavit explaining the reasons for the delay in filing the appeal before the CIT(A). The CIT(A) shall take note of the delay condonation application filed and take decision in the matter in accordance with law. It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(WASEEM AHMED)
Accountant Member**

Sd/-

**(GEORGE GEORGE K)
Vice President**

Bangalore.

Dated: 17.09.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.