

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1578/Bang/2024
Assessment Year : 2017-18

Shri. Thimmiah Narayanappa Muralidhar, No.5, Karidevaraker I Cross, Gandhibazaar, Shimoge – 577 202. PAN : BQKPM 0728 C	Vs.	ITO, Ward – 3, Shivamogga.
APPELLANT		RESPONDENT

Assessee by	:	S/Shri. Ravishankar and Monish Sowkar, Advocates.
Revenue by	:	Shri. Ganesh R Gale, Standing Counsel for Department.

Date of hearing	:	23.09.2024
Date of Pronouncement	:	23.09.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the CIT(A)'s Order dated 26.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The solitary issue that is raised is whether CIT(A) is justified in dismissing the appeal of the assessee *in limine* without condoning the delay in filing the appeal before him. On merits, the issue raised is the addition made under section 69A of the Act, amounting to Rs.10,59,000/-.

3. Brief facts of the case are as follows:

For the Assessment Year 2017-18, the return of income was filed declaring income of Rs.3,44,000/-. The assessment was selected for scrutiny and Assessment Order under section 143(3) of the Act was completed vide Order dated 10.12.2019. In the said Assessment Order, the AO made an addition of Rs.10,52,000/- under section 69A of the Act. The AO also applied the special rate of tax under section 115BBE of the Act, and raised a demand of Rs.11,27,257/- (including interest under section 234A and 234B of the Act).

4. Aggrieved by the Assessment Order passed under section 143(3) of the Act, assessee preferred appeal before the First Appellate Authority (FAA). Before the FAA, there was delay in filing this appeal. Assessee had filed an application for condonation of delay which reads as follows:

“The order was served on the appellant on 10.12.2019. The Income Tax Laws (ITL) require the appeal documents to be filed before your Honour's within 30 days from date of service of notice. The appeal should have been filed on or before 09.01.2020. There is a delay in filing the appeal on the following grounds:

- a. The undersigned had entrusted the task of filing his income tax returns to an external consultant. Further, it was later observed that such consultant had provided his e-mail address and his contact details in the Income tax portal instead of the assessee's details. The appellant was unaware of the order being served upon him as the external consultant had not communicated this to the assessee.*
- b. It was only upon receipt of final show cause notice in relation to levy of penalty the external consultant shared the details and alerted the appellant to file the appeal immediately. Upon receipt of this information, the appellant wishes to prefer an appeal for the AY 2017-18.*
- c. It is humbly contended that the undersigned was unaware of the order being passed and owing to the error of the external consultant the assessee has been put in grave trouble.*

The appellant was unaware of the proceedings initiated against him and further he has not received the order served by the AO which was being sent to the external consultant's mail id. The delay was neither intentional nor deliberate. Considering the facts of the case, it is earnestly requested to condone the delay in filing the appeal and admit the same for your consideration.

It is also humbly contended that the Honorable Supreme Court taking cognizance of the pandemic created by Covid -19 has extended the time limit in relation to filing of petitions/applications/ appeals and all other proceedings vide its Order dated 23.09.2021 and has directed that in computing period of limitation in relation to filing of any suit, appeal, application or proceedings the period from 15.03.2020 to 02.10.2021 be excluded. Accordingly, there has been a delay in filing of the appeal.

In this context, after considering the above directions given by the Honorable Supreme Court the period from 15.03.2020 till the date of filing of this appeal stands excluded and therefore the delay of 64 days is only considered, viz from 10 January 2020 to 14 March 2020.

*Also, the assessee wishes to place reliance on Honorable Supreme Court decision in the case of **Collector, Land Acquisition v/s MST. KATIJA 167 ITR 471**, wherein it was observed that where there is a sufficient cause, technical grounds should not be a hindrance and should be interpreted to advance substantial justice.*

Therefore, under these circumstances it is prayed that this Hon'ble CIT(A) be pleased to:

- 1) Condone the delay in filing the appeal,*
- 2) Hear and adjudicate the appeal on merits,*
- 3) Pass any other order or orders that may be deemed necessary in the circumstances of the case and render justice.”*

5. The CIT(A) dismissed the appeal of the assessee *in limine* without condoning the delay in filing the appeal before him. Assessee has filed a Paper Book comprising of 76 pages enclosing therein the case laws relied on. The learned AR submitted that there is delay of only 64 days after considering the directions given by the Hon'ble Supreme Court for exclusion of the period from 15.03.2020 till the

date of filing of this appeal on account of covid pandemic. Further, it was submitted that assessee was not aware of the Assessment Order being passed since the earlier consultant had given his email ID and the Assessment Order was only served on consultant's email ID which was not brought to the notice of the assessee. It was submitted that assessee became aware of the passing of the Assessment Order only when penalty proceedings were initiated against the assessee.

6. The learned Standing Counsel supported the Order of the CIT(A).

7. We have heard the rival submissions and perused the material on record. Assessee had entrusted the task of filing his income tax return to a consultant who had provided his email ID and his contact details in the income tax portal instead of assessee's details. Assessee has placed on record evidence to show that email address of the consultant has been uploaded in the income tax portal instead of assessee's details. Assessee became aware of the passing of the Assessment Order only when penalty proceeding was initiated against him. Assessee had changed his email ID during the course of appellate proceedings as well as in the proceedings before the Tribunal. On the facts of the instant case, we find that assessee was unaware of the Assessment Order being passed and therefore there is sufficient reason for the delay in filing the appeal before the FAA. The delay is not intentional nor deliberate and no laches can be attributed to the assessee. In following case laws / pronouncements, it has been held that a liberal interpretation is to be taken while considering the delay condonation application:

- R.R Earthworks v. DCIT ITA.No 570/ Bang/2023 dated 14.12.2023
- CIT and Anr. V. Golf View Homes Ltd (2017) 148 DTR 27 (Kar).
- CIT v. ISRO Satellite Centre 218 Taxman 74 (Kar).

- L. Sohanraj v. DCIT in ITA No. 120-135 of 2004 dated 19/07/2004 (Kar).
- DIT(E) v. Karnataka Golf Association 42 taxmann.com 57 (Kar).
- Collector, Land Acquisition v. Mst. Katiji and Others 167 ITR 471. (SC).
- Concord of India Insurance Co. Ltd. v. Smt Nirmala Devi and Others 118 ITR 507 (SC).
- Radha Krishna Rai v. Allahabad Bank and Others (2009) 9 SCC 733
- CIT v. West Bengal Infrastructure Development Finance Corporation Ltd 334 ITR 269 (SC).
- CIT v. Sanmac Motor Finance Ltd 322 ITR 309 (Mad).
- Ramnath Sao and Others v. Gobardhan Sao and Others (2002) 3 SCC 195
- Senior Bhosale Estate (HUF) v. ACIT (2019) 112 Taxmann.com 134
- lanka venkateshwara v. State of Andhra Pradesh and others 2011 4 SCC 363
- PCIT v. Suncity Projects (P) Ltd 145 taxmann.com 458 (SC)

8. As mentioned earlier, in the facts of the instant case, there is reasonable cause for delay in filing of the appeal and no laches can be attributed to the assessee. Relying on the aforesaid judicial pronouncements, we condone the delay in filing the appeal before the CIT(A) and restore the matter to the FAA so that a decision can be taken on merits. The assessee is directed to co-operate with the Revenue and shall not seek unnecessary adjournment in the matter. It is ordered accordingly.

9. 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/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated : 23.09.2024.

/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.