

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

**Before Shri George George K., Vice President
and
Ms. Padmavathy S., Accountant Member**

ITA No.1913/Bang/2024: Asst.Year : 2010-2011

Sri.Sivarama Krishnaiah Gumpena, 46 C Cross Anjanadri Enclave Babus Palya, Kalyan Nagar Bengaluru – 560 043. PAN: ABOPG1156E.	vs.	The Income Tax Officer Ward 5(3)(2) Bangalore.
(Appellant)		(Respondent)

Appellant by: Sri.N.P.S.Sundar, Advocate
Respondent by: Sri.Ganesh R.Gale, Standing Counsel for Department

Date of Hearing : 29.10.2024	Date of Pronouncement: 29.10.2024
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ORDER

Per: Padmavathy S., A.M.

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) Bengaluru – 2 (the CIT(A)in short) dated 15.11.2018 for assessment year (AY) 2010-11.

2. The assessee is an individual and filed the return of income for assessment year 2010-11 on 28.07.2010 declaring a total income of Rs.20,27,180. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessing officer (AO) completed the assessment by making additions towards Interest from Bank Deposits of Rs.18,714, unexplained cash deposits into bank for Rs.5,00,000 and difference

in salary income declared and as per Form 26AS to the tune of Rs.6,54,106. The AO has also considered the returned income as Rs.21,43,360 instead of Rs.20,27,180 which resulted in an addition of Rs.1,16,180. The assessee in the appeal filed before the CIT(A) did not contend the issue of addition made towards bank interest. On the addition made towards difference in salary income the assessee contended only to the tune of Rs.5,60,531 and conceded the addition of Rs.93,575. The assessee contended the rest of additions made by the AO towards cash deposits and difference in returned income before the CIT(A). The CIT(A) adjudicated only the grounds raised with regard to the cash deposit and did not give any specific findings with regard to the other issues contended by the assessee. The relevant findings of the CIT(A) is extracted below –

“5. I have considered the above grounds of appeal, statement of facts and written submissions filed by the appellant and also perused the assessment order. The assessing officer has found on verification that the assessee has not declared interest income received from Bank amounting to Rs.18,714/- which has been added to the total income returned for the assessment year 2010-11 and there was a difference between AS26 and return of income declared by the assessee for the assessment year 2010-11 amounting to Rs.6,54,106/- which has been added to the total income declared by the assessee for the assessment year 2010-11. The assessee has shown some cash deposits amounting to Rs.5,00,000/- in his Bank statements for which the assessee has no proper explanation for having made the cash deposits in the Bank during financial year 2009-10 relevant to the assessment year 2010-11. Hence, an addition of Rs.5,00,000/- was added to the total income returned for the assessment year 2010-11 and taxed accordingly. During the appellate proceedings my predecessor has called for Remand Report that during the course of appeal proceedings, the AR of the appellant filed evidences to explain the issues raised by the Assessing Officer and also submitted that all the evidences filed before the AO during the course of assessment proceedings were not taken into account while passing the assessment order. The evidences filed by the appellant were forwarded for his comments and report. Accordingly the Assessing Officer has sent his comments vide his report dated 05.03.2018 as under:

During the course of scrutiny proceedings the Assessing Officer made an addition of Rs.5,00,000/- on account of being cash deposit and no proper explanation thereof. It is seen from the material available on record as well

as the submission made by the assessee, an amount of Rs.5,00,000/- in cash has been received by the assessee from M/s Srinidhi Projects on 20.11.2009 and deposited in ICICI Bank Ltd, Koramangala Branch, Bangalore on the same date i.e. 20.11.2009. The confirmation letter by M/s Srinidhi Project has been verified. The bank statement of AC No. 004701014851 in ICICI Bank Ltd Koramangala Branch, Bangalore has been also verified and is available on record.

The assessee was provided an opportunity of being heard in connection with the additional evidence filed before Ld. CIT(A)-2, Bangalore vide letter dated 21.06.2018. The assessee did not respond. An another opportunity was also provided vide this office letter dated 01.08.2018 to appeal on 07.08.2018 before the undersigned. However, the assessee didn't avail the opportunities.

Further my predecessor has again written to the AO to send specific comments stating that vide this office letter dated 28.02.2018, a specific report was called for on the submissions and the allegations made by the appellant that all the relevant evidences were furnished before the AO and the AO not properly considered the same while making the summary addition of Rs.5,00,000/-. Considering these submissions the appellant has sought deletion of the addition made by the AO. However, in the remand report forwarded by your office on 07.03.2018, the AO has stated as under:

"it is submitted that the Assessing officer after having duly considered the bank statements filed by the assessee and the explanations offered by him has treated the said Rs.5,00,000 as unexplained cash deposit brought to tax"

The AO has not made any verifications of the facts to examine the issue at length. Thus, the AO simply brushed aside the reference made, by simply concluding that the then AO has considered the explanation in respect of Rs.5,00,000/- while making addition of Rs.5,00,000/- in the impugned order.

Therefore you are directed to get the issue thoroughly verified in the light of the submissions made by the appellant and send a detailed report in this regard at the earliest. If need be, the AO may call the appellant for discussing the facts of the case and submissions made in this regard. The report may be within 15 days of receipt of this letter.

During the appellate proceedings the appellant has submitted confirmation letter from M/s. Srinidhi Projects which is as under:

We have received from Sri. SIVARAMA KRISHNAIAH Rs.14,00,000/- by cash & cheque on different dates towards purchase of site from our firm.

Thus out of the total cash deposits of Rs.22,60,000/- appellant could explain the sources to the extent other than 5 lakhs of 16th & 20th November on which date it was explained that cash paid by M/s.Srinidhi

Projects as refund of site advances. The AR has explained the sources for such site advance and when it was paid, he explained that they were paid by the cheque and NEFT out of his salary savings and it was over a period of time. The copy of ledger account and confirmation from M/s. Srinidhi Projects furnished before me. As regards the deposits of 5 lakhs made on 16 November it was explained as received the same from M/s. Srinidhi Projects. The appellant being the salary employee there would be no occasion to generate any cash. In view of the facts of the case I hold that the sources for cash deposits made are treated as explained. The grounds are allowed.*

6 *In the result, the appeal is allowed.”*

3. It is relevant to note that the CIT(A) has stated in the appellate order that the appeal is allowed though he did not adjudicate all the grounds raised by the assessee.

4. There is a considerable delay (around 6 years) in filing the appeal before the Tribunal and the assessee filed a petition for condonation of delay. The assessee also raised grounds contending the additions arising out of the issues not adjudicated by the CIT(A)'s order which the AO in the order giving effect dated 27.08.2024 has retained. For the purpose of adjudication first we will consider the issue of condoning the delay in filing the appeal before the Tribunal.

5. We heard the parties and perused the material on record. The Id AR submitted that since the appellate order stated that the appeal is allowed, the assessee was under the bonafide belief that he is not aggrieved by the order of CIT(A) and that accordingly no appeal was preferred before the Tribunal. The Id AR further submitted that the assessee realised that the CIT(A) has granted relief only for the addition made towards cash deposits and not for other additions only when the OGE was passed by the AO on 27.08.2024 and hence the delay in filing the appeal before the Tribunal. The Id AR also submitted

that the delay is not intentional and due to the bonafide belief. Accordingly the Id AR prayed for condonation of delay in filing the appeal before the Tribunal.

6. The Id DR vehemently opposed the condonation stating that the assessee could not have waited for the OGE to understand the relief granted and accordingly submitted that the delay should not be condoned.

7. We heard the parties and perused the material on record. The AO while passing the order under section 143(3) has made various additions against which the assessee filed appeal before the CIT(A). From the perusal of the findings of the CIT(A) as extracted in the earlier part of this order, it is clear that the CIT(A) has adjudicated only the ground pertaining to the addition made towards cash deposit and has given relief to the assessee. It is further noticed that the CIT(A) has not adjudicated the grounds pertaining to the rest of the additions contended by the assessee but in the end of the appellate order we notice that the CIT(A) has held that the appeal of the assessee is allowed. We further notice that the AO has passed the OGE after 6 years i.e. order of the CIT(A) is dated 15.11.2018 and the AO's OGE is dated 27.08.2024 and the effect of the OGE is that all the additions have been retained except the addition made towards cash deposit for which the CIT(A) has given specific relief. Before proceeding further, we will look at some of the legal dictum laid down with regard to the issue of condonation of delay. The Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) while considering the issue of condonation of delay, laid down certain principles as reproduced here under :-

(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 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.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In assessee's case it is an admitted fact that the AO has taken 6 years to pass the OGE. It is also an admitted fact that the CIT(A) has not adjudicated all the grounds raised by the assessee and has not given any findings with regard to additions made towards incorrect returned income and addition towards difference in income as per Form 26AS. Therefore in our view the assessee has no reason to delay the filing of appeal against the order of the CIT(A) except the bonafide belief that he has been granted full relief by the CIT(A) which is substantiated by the finding of the CIT(A) in para 6 of the CIT(A)'s order.

9. Now the next question is whether the delay of 6 years which as per the contentions of the revenue is inordinate and excessive, can be condoned. We have to examine delay as excessive or inordinate based on whether there is a reasonable cause for not filing the appeal on time by the assessee and in our view when there is a reasonable cause, the period of delay may not be relevant factor. The Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic

approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause” the principle of advancing substantial justice is of prime importance and the expression “sufficient cause” should receive a liberal construction. Therefore, this Judgment of the Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression “sufficient cause” should receive a liberal construction.

10. Considering the above judicial precedence and the facts peculiar to the assessee, we are of the view that the delay in filing the appeal is not deliberate and that the bonafide belief of the assessee is sufficient cause for not filing the appeal within the prescribed time limit. Accordingly we are inclined to condone the delay in filing the appeal before us and the appeal is admitted for adjudication.

11. As already stated, the CIT(A) has not adjudicated all the issues contended in the appeal and has not given any findings on merits with regard to the issue of incorrect returned income and addition towards difference in income as per Form 26AS. Therefore we remit the appeal back to the CIT(A) with a direction to adjudicate the issue of addition towards incorrect returned income and addition towards difference in income as per Form 26AS by calling for relevant details as may be required in this regard and decide in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

12. Before parting, we would like state that our decision in this appeal is based on the facts that are peculiar to this case alone and cannot be applied as precedence in any other case.

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

Order pronounced in the open Court on 29th October, 2024.

Sd/-
(George George K.)
Vice President

Sd/-
(Padmavathy S.)
Accountant Member

Bengaluru, Dated: 29th October, 2024

Copy to:

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

//True Copy//

By Order
Assistant Registrar
ITAT, Bangalore