

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

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT

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| ITA No.1794/Bang/2024 |
| Assessment Year : 2015-16 |

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| Shri. Guru Sajjan, Guru Sannappa Sajjn 76 4 5 to 478 and Other H, Babaleshwar, Bijapur – 586 113. PAN : EAPPS 7300 C | Vs. | ITO, Ward – 1 & TPS, Bijapur. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Smt. Prathibha R, Advocate |
| Revenue by | : | Shri. Ganesh R Gale, Standing Counsel for Department. |

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| Date of hearing | : | 21.10.2024 |
| Date of Pronouncement | : | 21.10.2024 |

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the Order of CIT(A) dated 05.08.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2015-16.

2. At the very outset, we notice that CIT(A) has passed an ex-parte Order dismissing the appeal of the assessee *in limine* without condoning the delay (if any) in filing the appeal before him. The relevant finding of the CIT(A) reads as follows:

“3. It is clear from the above that the order u/s 147 r.w.s 144 was made on 13.10.2023 which got served upon the appellant on 13.10.2023 but the

appeal was filed on 11.04.2024 i.e. beyond prescribed time of 30 days, whereas, the appellant was required to file appeal within 30 days as provided vide section 249(2) on receipt of order u/s 147 r.w,s 144. Further, the contention of the appellant regarding delay in filing of appeal is without any substance in it. The appellant was required to file appeal within 30days of the receipt of demand notice. However, the appellant has not done so. Hence, the reason stated can't be relied upon and therefore, as provided in the section 249(3) of the IT Act. Accordingly, I am not satisfied that the appellate had sufficient cause for not presenting the appeal within the specified period. Hence, since, appeal was not filed within prescribed time as provided in the section 249(2) of the IT Act, the same is not admitted.

4. *In view of the above facts, the appeal is dismissed for statistical purpose and not required to be adjudicated on merits.”*

3. The learned AR submitted that assessee had filed the appeal on time. It was submitted that Assessment Order was passed on 19.03.2024 and appeal was instituted before the First Appellate Authority (FAA) on 11.04.2024. It was submitted that assessee had committed a mistake in mentioning the date of Assessment Order as 13.10.2023. It was submitted that the date 13.10.2023 is the date on which the notice under section 142(1) of the Act was issued. Therefore, it was contended that CIT(A) has erred in dismissing the appeal of the assessee *in limine* without adjudicating on merits.

4. The learned Standing Counsel was duly heard.

5. I have heard the rival submissions and perused the material on record. Admittedly, in this case, the Assessment Order has been passed on 19.03.2024 under section 147 r.w.s. 144 of the Act. The appeal has been filed on 11.04.2024 i.e., well within the time prescribed under section 249(2) of the Act. Therefore, the CIT(A) has erred in dismissing the appeal *in limine* without adjudicating on merits. Hence, the issues raised in this appeal are restored to the files of the FAA.

The CIT(A) is directed to adjudicate the issues on merits. It is ordered accordingly.

6. 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/-

**(GEORGE GEORGE K)
Vice President**

Bangalore.

Dated: 21.10.2024.

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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.