

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

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.1852/Bang/2024
Assessment Year : 2017-18

Shri. Muniyappa Srinivasa Gowda, Nil, S Madamangala Villalge Madamangala, Bangarpet, Kolar – 563 114. PAN : CFGPS 9880 D	Vs.	ITO, Ward – 1, Kolar.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Raghendra Chakravarthy, CA
Revenue by	:	Ms. Neha Sahay, JCIT(DR)(ITAT), Bangalore.

Date of hearing	:	30.10.2024
Date of Pronouncement	:	30.10.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 29.06.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. There is a delay of 32 days in filing this appeal before the Tribunal. Assessee has filed a petition for condonation of delay along with the supporting affidavit stating therein the reasons for belated filing of this appeal. On perusal of the reasons stated in the affidavit, we are of the view that no laches can be attributed to the assessee as there is sufficient cause for belated filing of this

appeal. Hence, we condone the delay and proceed to dispose off the appeal on merits.

3. At the very outset, we notice that CIT(A) had dismissed the appeal of the assessee *in limine* without adjudicating on merits. The CIT(A) held that there is a delay of 640 days in filing the appeal before him and there is no reasonable cause for condoning the same.

4. The learned AR submitted that CIT(A) dismissed the appeal of the assessee without providing reasonable opportunity to explain the delay in filing the appeal before him. It was submitted that assessee had filed the condonation application and also affidavit of the concerned CA in whose Office there was an inadvertent omission to take appropriate action to file the appeal before the First Appellate Authority (FAA). It was submitted that the CIT(A) has not taken notice of the condonation application and the affidavit of the concerned CA. The learned AR further submitted that CIT(A) has referred to the reasons for condonation of delay in some other case and erroneously not condoned the delay. The learned AR had placed on record the condonation application which was annexed along with Form 35 filed before CIT(A).

5. The learned DR did not have a serious objection for the matter to be remitted to the CIT(A) to consider the delay condonation application filed by the assessee afresh.

6. We have heard the rival submissions and perused the material on record. The CIT(A) has passed ex-parte Order without condoning the delay of 640 days in filing the appeal before him. The CIT(A) at para 2 of the impugned Order had extracted the reasons stated by the assessee in Form 35. The same read as follows:

15. If reply to 14 is yes, enter the grounds for condonation of delay (not exceeding 500 words)	The lack of proper compliance was not intentional or wilful but due to lack of awareness. The appellant does not have any educated person in the family.
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7. Assessee had not given any reasons in column 14 of Form 35 filed before the CIT(A). On the contrary, assessee had attached an Annexure and the same is mentioned in column No.14 of Form 35 filed before the CIT(A). The reasons for belated filing of appeal before the CIT(A) that is given in the condonation application is extracted before for ready reference:

BEFORE THE HON'BLE COMMISSIONER OF INCOME TAX APPEALS (CIT), NFAC

In the matter of SRI MUNIYAPPA SRINIVASA GOWDA for the Assessment Year 2017-18

Request for Condonation Of Delay In Filing The Appeal Against Assessment Order Of Assistant Commissioner of Income Tax

1. *That I "MUNIYAPPA SRINIVASA GOWDA" aged 54 years, identified by PAN CFGPS9880D. I am residing at S MADAMANGALA VILLAGE MADAMANGALA BANGARPET, KOLAR - 563114, Karnataka, India. I am the Proprietor of SRI MARIKAMBA VEGETABLES and I am authorized to file the petition for condonation of delay. I do solemnly affirm and state on oath as under:*
2. *That I the above named petitioner, am well conversant with the facts stated to below.*
3. *That the income tax assessment for the assessment year 2017-18 has been completed by the Ld. Assessing Officer vide DIN ITBA/AST/S/147/2021- 22/1041335602(1) order dated 23.03.2022.*
4. *That the time for filing of the appeal before the Hon'ble Commissioner of Income Tax (Appeals), NFAC, was to expire on 22.04.2022*

5. *The impugned order was passed due to non-receipt of response from the Appellant..*
6. *That I wish to bring to the esteemed attention of the Hon'ble Commissioner of Income Tax (Appeals), NFAC, the unfortunate circumstances leading to the cessation of communication. Owing to severe health complications, I was rendered incapable of accessing mails, attending to correspondences, or participating in any matters pertaining to the tax assessment. This critical phase resulted in the inadvertent non- receipt and response to crucial communications from the Income Tax Department.*
7. *I was hospitalized in Oct'2019 and post discharge period, I was under medical advice and compelled to observe a complete rest to avoid stress and future complication associated with health. Medical certificates and reports substantiating the severity of the health condition are enclosed herewith for the esteemed perusal of the Hon'ble Commissioner of Income Tax (Appeals), NFAC, The incapacitation was beyond the control and necessitated a prolonged period of convalescence, thereby hindering any engagement with official communication channels.*
8. *When the order was passed by the Ld. Assessing Officer I approached SHASHIKUMAR.K & CO Practicing Chartered Accountant Firm in Bangarpet to handle the Assessment Proceeding and file an Appeal before CIT(A), NFAC. The Drafting and Filing of CIT(A) was taken care by his senior staff, whereas representation was done by him. Accordingly, the professional guided and assisted in preparation of financial statements, computation of income and determination of tax liability. I was given assurance that the appeal will be filed and I was of the view that the Appeal was also filed.*
9. *However, it came to my knowledge that the appeal filing is still pending only while filing income tax returns for the AY 2023-24. On cross checking with Chartered Accountant by visiting his office, I was informed that the Senior Assistant who was in charge of filing the Appeal had misplaced the papers based on which Appeal had to be filed. The CA was also of the view that the Appeal was filed by the Senior Assistant till I brought the matter before him regarding non filing of Appeal. The delay is due to inadvertent omission on the part of CA in taking appropriate action to file the appeal. Copy of Affidavit by CA is Attached via **Annexure-2***

10. *The appeal is filed before this Hon'ble CIT (A), NFAC, on date 24.02.2024 accompanied by an application for condonation of delay as provided under section 5 of the LIMITATION ACT, 1963*
11. *That in this way there is a delay of 634 days for which an application under Section 5 of the Limitation Act has been filed along with memorandum of appeal.*
12. *That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal.*
13. *I place reliance on the following case law and beg your honor to condone the delay in filing the appeal.*
14. *Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the delay of condonation and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal.*

It is settled position of law that where the delay was bonafide and there is sufficient cause for delay in filing appeal the delay must be condoned by the appellate authority specially when it is necessary for rendering the substantial justice to the assessee.

It is submitted that there was no malafide or deliberate delay in filing the present appeal and in the interest of substantial justice, the delay in filing the present appeal may be condoned and the appeal be admitted for adjudication.

On the basis of above, I humbly request to condone the delay in submission of appeal by 634 days”

8. From the perusal of the impugned Order of the CIT(A), we notice that the reasons stated by the assessee in condonation application has not been taken note by the FAA. Therefore, in the interest of justice and equity, we are of the view that the matter needs to be examined afresh by the CIT(A). Accordingly, the case

is remitted to the files of the CIT(A) for denovo consideration of the condonation application. 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/-

**(PADMAVATHY S)
Accountant Member**

Sd/-

**(GEORGE GEORGE K)
Vice President**

Bangalore.

Dated: 30.10.2024.

/NS/*

Copy to:

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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.