

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

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1719/Bang/2024
Assessment Year: 2018-19

Rebecca Pooja Dsouza P1 Angel Arcade, 10 th Cross Kaggadasapura C.V. Raman Nagar Bangalore 560 093 Karnataka. PAN NO : BKTPD5348E	Vs.	ITO Ward-4(3)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Kirat Singh, A.R.
Respondent by	:	Sri Ganesh R. Gale, Standing Counsel for department

Date of Hearing	:	14.11.2024
Date of Pronouncement	:	28.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of assessee is directed against the order of Id. ADDL/JCIT(A)-11 Mumbai dated 5.6.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1065409663(1) for the AY 2018-19 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. The assessee has raised following grounds of appeal:

- 1. The order passed by the learned Commissioner of Income Tax (Appeals) (NFAC), under section 250 of the Income Tax Act, 1961 (“the Act”), insofar as it is against the Appellant, is opposed to law, weight of evidence, natural justice and probabilities on the facts and circumstances of the Appellant's case.*
- 2. The order passed by the learned CIT(A) is without jurisdiction on the facts and circumstances of the case.*

3. *The learned CIT(A) erred in not condoning the delay of 120 days in filing the appeal on the facts and circumstances of the case.*
4. *The learned CIT(A) failed to appreciate that there is existed sufficient cause in filing the appeal with a delay of 120 days on the facts and circumstances of the case.*
5. *The Appellant denies itself liable to be assessed on a total Income of Rs.37,05,940/- as against the returned income of Rs.16,55,470/- on the facts and circumstances of the case.*
6. *The learned CIT(A) erred in law in upholding the adjustment made by Assessing Officer aggregating to Rs. 20,50,473/- under section 36(1)(va) of the Act on account of delay in remittance of PF & ESI contribution on the facts and circumstances case.*
7. *The CIT(A) failed to appreciate that the intimation issued by the learned Assessing Officer under section 143(1) of the Act is bad in law on the facts and circumstances of the case.*
8. *The authorities below failed to appreciate that the processing of the return of income under section 143(1)(iv) of the Act, was prospective and no adjustment w.r.t. increase in income was permitted prior to AY 2022-23, on the facts and circumstances of the case.*
9. *The authorities below failed to appreciate that the adjustment made under section of the Act is bad in law as it exceeds the limited scope to carry out prima facie adjustments and arithmetical corrections stipulated under section 143(1)(a) of the Act and consequently, the adjustment made is liable to be deleted on the facts and circumstances of the case.*
10. *Without prejudice, the CIT(A) erred in law and on facts in not allowing the delayed contribution of ESI and PF aggregating to Rs. as business expenditure under section 37 of the Act on the facts and circumstances of the case.*
11. *The Appellant denies liability to pay interest under section 234A, 234B and 234C on the facts and circumstances of the case.*

The Appellant craves to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.

3. There is a delay of 37 days in filing the appeal before this Tribunal. The ld. Counsel for the assessee has drawn our attention on the application for condonation of delay filed along with an

affidavit dated 13/11/2024 sworn before the Notary Public, which are reproduced below for ease of reference & convenience :-

**BEFORE THE INCOME TAX APPELLATE TRIBUNAL,
BENGALURU 'C' BENCH**

Name & Address of the Appellant:	Smt. Rebecca Pooja Dsouza, P1 Angel Arcade, 10 th Cross, Kaggadasapura, C.V. Raman Nagar, Bengaluru - 560 093
PAN	BKTPD 5348 E
Assessment Year	2018-19
ITA No.	1719/Bang/2024

APPLICATION FOR CONDONATION OF DELAY

The Appellant above named most respectfully submits as follows:—

1. An order was passed by the learned Commissioner of Income Tax (Appeals) (NFAC) ("CIT(A)"), under section 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018 - 19 on 05.06.2024.
2. It is submitted that the appeal ought to have been filed within 60 days from the date of the order i.e., on or before 04.08.2024, however the appeal was filed only on 09.09.2024 and consequently, a delay of 37 days, i.e., from 04.08.2024 to 09.09.2024, arose in filing the impugned appeal.
3. It is submitted that the Appellant is an individual and received the impugned assessment order but was initially advised by her Chartered Accountant not to file an appeal before this Hon'ble Tribunal, based on the Supreme Court's decision in *Checkmate Services (P.) Ltd.* reported in [2022] 143 taxmann.com 178 (SC), where a similar issue was purportedly adjudicated. However, upon seeking advice from her current tax counsel, she was advised to file an appeal as the facts of the present case are distinguishable from those in *Checkmate Services (P.) Ltd.* Accordingly, the Appellant immediately filed the present appeal.

4. In view of the above submissions, it is contended that the delay was not intentional or deliberate and arose due to the aforementioned circumstances which were beyond the appellant's control, and consequently, it is prayed that the delay be condoned and the appeal be adjudicated on the merits of the matter in the interest of justice and equity.
5. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondents if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST.Katiji and Others [1987] 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507. Further the appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733.
6. Reliance is also placed on the unreported decision of the Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 and other batch of appeal order dated 28.10.2011 has condoned the delay of 5 years in filing the appeal before the CIT(A), the relevant observation is at para 28 page 72 of the order.
7. Wherefore, it is once again humbly prayed that the delay of 37 days may kindly be condoned for the advancement of substantial cause of justice and equity. It is further prayed if an adverse view were to be taken, an opportunity of hearing be granted in the interest of equity, justice and principles of natural justice.

Place: Bengaluru

Date: 11.11.2024


Appellant



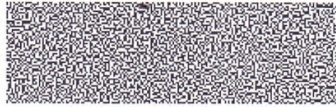
INDIA NON JUDICIAL

Government of Karnataka



e-Stamp

Certificate No. : IN-KA6566692993612W
Certificate Issued Date : 12-Nov-2024 04:41 PM
Account Reference : NONACC (FI)/ kacrsf08/ KAGADASAPURA1/ KA-SV
Unique Doc. Reference : SUBIN-KAKACRSFL0873570342014390W
Purchased by : REBECCA POOJA DSOUZA
Description of Document : Article 4 Affidavit
Property Description : AFFIDAVIT
Consideration Price (Rs.) : 0
(Zero)
First Party : REBECCA POOJA DSOUZA
Second Party : THE INCOME TAX OFFICER
Stamp Duty Paid By : REBECCA POOJA DSOUZA
Stamp Duty Amount(Rs.) : 100
(One Hundred only)



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BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,

BENGALURU

BETWEEN

REBECCA POOJA D'SOUZA

#3B, Angel Arcade, 10th Cross, Kaggadasapura, CV Raman Nagar,

Bengaluru - 560 093

Appellant

Statutory Alert:

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AND

The Income Tax Officer, Ward - 4(3)(3),
BMTc Building, Soft Road, Koramangala, Bengaluru

Respondent

AFFIDAVIT

I, Rebecca Pooja D'Souza, D/o Auriel D'Souza, aged about 33 years, residing at #3B, Angel Arcade, 10th Cross, Kaggadaspura, CV Raman Nagar, Bengaluru - 560 093, on this day as mentioned below, do hereby affirm under oath as follows:

1. I state that, I am the appellant in the present Appeal against order under section 250 of the Income Tax Act, 1961 and I am conversant with the facts of the present case. I am competent to swear to this affidavit.
2. I state that what is stated in Para 1 to 7 of the accompanying Condonation of Delay application are true and correct to the best of my knowledge, information and belief.
3. I state that what is stated in Para 1 to 2 of the present affidavit is true and correct to the best of my knowledge, information and belief.

Dated this 13th day of November, 2024 at Bengaluru.

Amarbas
Identified by me

[Signature]
Deponent

SWORN TO BEFORE ME
[Signature]
13/11/2024
A. R. MUNEER AHMED, M.Com., LL.B., DPM & IR,
ADVOCATE & NOTARY,
Govt. of India
F-457, Near Halasuru Chariat, Old Madras Road,
HALASURU, BANGALORE - 560 004.



13 NOV 2024

3.1 On going through the above application, the main reason as cited for the delay in filing the appeal before this Tribunal is that the Chartered Accountant of the assessee initially advised her not to file an appeal in view of the Supreme Court's decision in Checkmate Services (P) Ltd. Reported in [2022] 143 taxmann.com 178 (SC) where a similar issue was purportedly adjudicated. However, upon seeking advice from the current tax counsel, she was advised to file an appeal as the facts of the present case are distinguishable from those in Checkmate Services (P) Ltd cited supra. Accordingly the assessee immediately filed the present appeal with a short delay of 37 days. Further, the ld. A.R. of the assessee vehemently submitted that the delay was neither intentional nor deliberate and arose due to circumstances beyond the control of the assessee & accordingly prayed to condone the short delay and admit the appeal for adjudication.

3.2 The ld. DR on the one hand though opposed for the condonation of delay but could not controvert the submissions made therein.

4. We have heard the rival submissions and perused the materials available on record. In our opinion, it cannot be said that assessee is very callous in its approach in filing the appeal before us. Being so, when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserve to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Moreover no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the belated appeal was filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. Therefore, in our opinion, this is

a fit case to condone the short delay of 37 days in filing the appeal before this Tribunal. Accordingly, the delay is condoned and the appeal is admitted for adjudication.

5. At the outset, the ld. AR of the assessee also drawn our attention to the order of the ld. ADDL/JCIT(A)-11 & submitted that there was a delay of 120 days in filing the appeal before the ld. ADDL/JCIT(A)-11 also, which was not condoned by the ld. ADDL/JCIT(A)-11 on the ground that there was no sufficient cause given by the assessee to file the appeal delayed by 120 days and accordingly rejected the submission for condonation of delay. Further the ld. ADDL/JCIT(A)-11 is also of the view that as the delay is not condoned, no adjudication on merits is warranted and accordingly dismissed the appeal of the assessee. Aggrieved the assessee is in appeal before us.

6. We have also gone through the reasons explained by the assessee for filing the appeal belatedly before the ld. ADDL/JCIT(A)-11 . The main reason as stated by the assessee in filing the appeal belatedly before the ld. ADDL/JCIT(A)-11 is that the impugned intimation under section 143(1) of the Act which was served through the email on 16/10/2019 was not perused by the staff of the assessee and the same came to the notice of the Chartered Accountant only in the month of April 2020 upon which all the necessary steps were taken to file the appeal immediately. We note that the ld. ADDL/JCIT(A)-11 by holding that the reason cited is general in nature & there is no reasonable cause cited by the assessee. We are of the opinion that the assessee has not only filed an separate application for condonation of delay before the ld. ADDL/JCIT(A)-11 but also mentioned in column No. 15 of the

Form No.35 filed by the assessee. It is not a case that the assessee has not cited any reasonable cause for filing appeal belatedly as observed by the ld. ADDL/JCIT(A)-11. The ld. ADDL/JCIT(A)-11 also could not brought any material on record to controvert the cause of delay cited by the assessee but simply affirmed that the reasons cited by the assessee is general in nature. At this juncture, it is appropriate to mention the judgement of Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(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, commonsense 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.*

6.1 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 for injustice being done because of non deliberate delay. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the delayed appeal was filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue.

6.2 Further, in the case of People Education & Economic Development Society Vs/ ITO reported in 100 ITD 87 (TM) (Chen), wherein held that “when substantial justice and technical consultation 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 non-deliberate delay”.

6.3 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not filing the appeal. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay 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. Furthermore, the Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay.

6.4 The Madras High Court in the case of Sreenivas Charitable Trust (280 ITR 357) (Mad.) 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.

7. In view of the above deliberations, we are of the opinion that, by preferring the substantial justice, the delay of 120 days has to be condoned and accordingly we are setting aside the Order of the Id. ADDL/JCIT(A)-11 with a direction to condone the delay of 120 days in filing appeal before him. Further as the Id. ADDL/JCIT(A)-11 has not adjudicated the case on merits as the delay was not condoned, we also direct to adjudicate the case on merits in accordance with the law after giving reasonable opportunity of being heard to the assessee. It is ordered accordingly.

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

Order pronounced in the open court on 28th Nov, 2024

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 28th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**