

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1684&1685/Bang/2024
Assessment Years: 2018-19 & 2019-20

QPAVE Solutions Private Limited No.9 VS Naidu Street Shivaji Nagar Bengaluru 560 051 PAN NO : AAACQ4291L	Vs.	ITO Ward-5(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Subramanya Bhat, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	26.11.2024
Date of Pronouncement	:	29.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

These appeals at the instance of the assessee are directed against the order of Id. Addl/JCIT(A)-2, Pune dated 14.5.2024 vide DIN & Order No.ITBA/APL/S/250/2024-25/1064851386(1) as well as order dated 31.5.2024 vide DIN & Order No.ITBA/APL/S/250/2024-25/1065317902(1) for the assessment years 2018-19 & 2019-20 respectively. Since both the appeals were dismissed by the Id. ADDL/JCIT(A) of the same assessee on the ground of not condoning the delay in filing the appeals as well as relying upon judgement of Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (2022) 143 taxmann.com 178 (SC). Hence, these appeals were clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. At the outset, the ld. A.R. of the assessee submitted that there is a delay of 51 days for the AY 2018-19 and 34 days for the assessment year 2019-20 in filing the appeal before this Tribunal. On perusal of the record, we find that assessee has filed an application for condonation of delay along with an affidavit dated 21.11.2024, sworn before the Notary public stating that the e-mail listed on the e-filing portal belongs to the aged Director, who was the signatory and the e-mails were not periodically checked by the Director at regular intervals. Further, the ld. A.R. of the assessee submitted that assessee has not received any notices by post or courier and due to over-looking of the e-mail by the Managing Director who is of very old age could not file the appeal on time. Thereafter, the assessee immediately sought professional advice and was advised to file the appeal before the Tribunal with a petition for condonation. Finally, the ld. A.R. of the assessee prayed that the petitioner would be put to great hardship and irreparable injury if the delay is not condoned. Reliance is also placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & Others (1987) 167 ITR 471 and also in the case of Concorde of India Insurance Company Ltd. Vs. Smt. Nirmala Devi Vs. 118 ITR 507. Further, the assessee relied on another decision of Hon'ble Apex Court in the case of Radha Krishna Rao Vs. Allahabad Bank & Others (2000) 9 SCC 733.

3. The ld. D.R. on the other hand, have opposed for the condonation of delay stating to be a habitual 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. The affidavit placed before us is reproduced below for ease of reference and record.

INDIA NON JUDICIAL
Government of Andhra Pradesh

IN-AP43667852751897W

e-Stamp

Certificate No.	: IN-AP43667852751897W
Certificate Issued Date	: 22-Nov-2024 01:48 PM
Account Reference	: NEWIMPACC (SV)/ ap18073303/ AP-ELR/ AP-EUR/apburagau
DDO Code	: 27002308001 O/o IG R
Unique Doc. Reference	: SUBIN-APAP1807330374498459862764W
Purchased by	: KIRAN KUMAR YELAMANCHILI Son of SESHAGIRI
Description of Document	: Article 0 Not Mentioned
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KIRAN KUMAR YELAMANCHILI Son of SESHAGIRI
Second Party	: Not Applicable
Paid By (For Whom)	: KIRAN KUMAR YELAMANCHILI Son of SESHAGIRI
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

SWORN TO BEFORE ME

MOHAMMED HUSSAIN, K. B.A.L., LL.B
ADVOCATE AND NOTARY
GOVT OF INDIA
Reg. No: 20459
No.717, 4th Main Road, COD Lane,
K.S Town, Kengeri Upanagara,
BANGALORE 560060.

NOTARY
KIRAN KUMAR YELAMANCHILI
Son of SESHAGIRI KIRAN KUMAR YELAMANCHILI SON OF SESHAGIRI

Please write or type below this line

26 NOV 2024

**IN THE HON'BLE INCOMETAX APPELLATE TRIBUNAL
BENGALURU BENCH, BENGALURU**

BETWEEN
Qpave Solutions Private Limited
No 9 Vs Naidu Street Taskar, Shivaji Nagar,
Bengaluru-560051 Appellant

AND

CPC (ITO, ward 5(2)(1), Bangalore)
Bangalore Respondent

AFFIDAVIT

I, Kiran Kumar Yelamanchili, Managing director of the Appellant aged about 50 years, residing at Villa No.44, Malpe town, Bandlaguda, Suncity, Hydershahkote, K V Rangareddy, Telangana 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 9 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 21st day of Nov 2024 at Bangalore

Identified by me *K. Yelamanchili*
Deponent
HDF 0022826148

Statutory Alert:

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IN THE HON'BLE INCOME TAX APPELLATE TRIBUNAL, BENGALURU

BETWEEN

Qpave Solutions Private Limited
No 9 Vs Naidu Street Taskar,
Shivaji Nagar
Bengaluru-560051

Appellant

AND

Income Tax Officer,
ward 5(2)(1),
Bangalore

Respondent

APPLICATION FOR CONDONATION OF DELAY FILED UNDER SECTION 5 OF THE LIMITATION ACT, 1963

The Appellant above named most respectfully submits as follows-

1. The intimation u/s 143(1) has been passed by the CPC (Assessing officer) dated 09/07/2020 for AY 2019-20, which fell within the period between 15/03/2020 and 28/02/2022, wherein the Apex Court has excluded the period of limitation due to Covid pandemic, along with an additional period of 90 days grace period for filing the appeal.
2. The due date for filing an appeal before the Hon'ble CIT(A), thus fell on 30/05/2022 for AY 2019-20. However, the appellant filed this appeal before CIT(A) only on 20/06/2023 with a delay of 386 days for AY 2019-20.
3. The email listed on the e-filing portal belonged to the aged Director, who was the signatory and the emails were not periodically checked by the Director at regular intervals. Further, the intimation since passed during the COVID period, the email has missed the attention of the Director of the appellant and only upon the adjustment of refund for the AY 2021-22, dt: 07/06/2023, towards the demand, the office of the appellant has verified the portal for outstanding demands and ascertained that an intimation was passed with a demand.

4. The Appellant has not received any notice by post or courier and also not received any mail for the recovery of demand, relating to the intimation issued under section 143(1) of the Act.
5. The Appellant has sought professional advice and was informed that the appeal was to be fought on the merits of the matter and advised the appellant to challenge the intimation order, by seeking a condonation of the delay and advised the appellant to file an appeal against the order of the CPC before the learned Commissioner of Income-Tax (Appeals).
6. The appellant has taken steps to challenge the intimation immediately and the appeal came to be filed thereafter, within a period of 12 days. It is submitted that there was no malafide intention to file the appeal belatedly on 20/06/2023, rather the appellant was prevented by reasonable cause in filing the appeal on time. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condones the delay of 386 days in filing the appeal before CIT(A), i.e. up to 20/06/2023.
7. The appellant has filed an adjournment before the CIT(A) dated 14/05/2024 sought for a month time for filing documents, thereafter the learned CIT(A) was passed order dated 31/05/2024 without considering the adjournment application. The managing director being aged, has overlooked the email and only upon intimation of the assessing officer for recovery of demand during the month of August 2024, became aware of the order passed by the CIT(A) under section 250 of the Act.
8. The appellant has immediately sought professional advice and was advised to challenge the order of the CIT(A) before this Hon'ble Tribunal. The appellant was prevented by reasonable cause in filing the appeal on time. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condones the delay of 386 days in filing the appeal before the CIT(A) and 34 days in filing the appeal before Hon'ble ITAT against the CIT(A) order, i.e. up to 02/09/2024.

9. 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 Respondent 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**.

Place : Bangalore
Date: 21/11/2024


Appellant

4.1 At this juncture, it is appropriate to mention the judgement of Apex 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 non-deliberate 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.

4.2 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 and claimed to have vested right for injustice doing so because of non-deliberate delay. Therefore, in our opinion, these are fit case to condone the delay of 51 days for the AY 2018-19 and 34 days for the AY 2019-20 in filing the appeal before this Tribunal. Accordingly, the delay is condoned and appeals are admitted for adjudication.

5. Now on going through the order of the ld. ADDL/JCIT(A) for both these assessment years, we find that the assessee has belatedly filed appeals before the ld. ADDL/JCIT(A) by 1283 days for the AY 2018-19 and 386 days for the AY 2019-20 and the ld. ADDL/JCIT(A) has not condoned the delay as per the provisions of section 249(3) of the Act in the absence of sufficient cause for not presenting the appeal within the time allowed. The ld. ADDL/JCIT(A) is of the view that on the issue of delay in filing the appeal before him, no reason was given by the assessee. Further, the assessee was given opportunity to file the reason vide issuing notice u/s 250 of the Act. However, the assessee has not responded with respect to substantial delay of about 1283 days and 386 days respectively for the AYs 2018-19 & 2019-20 and accordingly, in the absence of sufficient cause, the ld. ADDL/JCIT(A) declined to condone the delay and held that appeal is non-maintainable being out of time. Further, we find that the ld. ADDL/JCIT(A) in the interest of natural justice has adjudicated appeal on merit also and by relying in the case of Checkmate Services Pvt. Ltd. Vs. CIT (2022) 143 Taxamann.com 178 (SC) dated

22.10.2022 has also dismissed the appeal on merits too. Aggrieved by the aforesaid orders of the ld. ADDL/JCIT(A) in both the years, the assessee has filed the present appeals before this Tribunal.

5.1 It is an undisputed fact that the assessee could not file any application for condonation of delay and also could not explain the “sufficient cause” for inordinate delay. Before us ld. A.R. of the assessee produced summary of PF statement for the financial years 2017-18 & 2018-19 by showing the details of return month, salary disbursement date, payment date and amount and submitted that all these details could not be filed before the ld. ADDL/JCIT(A) and requested to remand back the case to the file of AO for considering the same afresh in accordance with law. Being so, we are of the considered opinion that in the interest of justice and fair play, one more opportunity may be granted to the assessee to substantiate his case and accordingly, we set aside the entire issue in dispute to the file of ld.ADDL/JCIT(A) to decide in accordance with law. The assessee is directed to file petition for condonation of delay before the ld. ADDL/JCIT(A) for both these years and explain sufficient cause for such inordinate delay and thereafter the ld.ADDL/JCIT(A) will take decision as per law and may consider the case on merits. The assessee is also directed to update the e-mail ID, mobile number etc. on the income tax web portal of the active director and cooperate with the proceedings before the ld. ADDL/JCIT(A) for early disposal. It is ordered accordingly.

6. In the result, appeals of the assessee are partly allowed.

Order pronounced in the open court on 29th Nov, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 29th 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.**