

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

**ITA No. 262/Coch/2024**

**Assessment Year : 2018-19**

Smt. Laura Ann, Apt Blk 283 06-137 Tampines, Street 22, Singapore. <b>PAN: APTPL3528C</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle, International Taxation Trivandrum.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri R. Krishnan, CA
Revenue by	:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	20-12-2024

**ORDER**

**PER BENCH**

This is an appeal filed by the assessee challenging the order of the Ld.CIT(A)-12, Bangalore dated 31/01/2023 in respect of the A.Y. 2018-19.

**2.** The brief facts of the case are that the assessee is a non-resident and filed her return of income on 24/07/2018. Thereafter, the case was selected for scrutiny under CASS and notices were issued for which the assessee had explained the sale of immovable properties along with her mother. The assessing officer had made the assessment by disallowing the claim that the

lands are agricultural land and taxed the same under the long term capital gains. As against the said order, the assessee filed an appeal before the Ld.CIT(A) with a delay of 39 days but not filed any application to condone the delay along with the appeal, therefore the ld CIT had dismissed the appeal on the ground that no delay condonation application was filed.

**3.** As against the said order, the assessee is in appeal before this Tribunal with the following grounds of appeal:

*“1) The learned Commissioner of Income Tax (Appeals) went wrong in treating the appeal as delayed without considering the order of the Hon. Supreme Court in granting extension of period of limitation in filing appeal.*

*2) The action of the learned Commissioner of Income Tax (Appeals) in dismissing the appeal without affording an opportunity to the appellant to submit response is bad in law*

*3) The learned Commissioner of Income Tax (Appeals) ought to have noticed that this is a case of protective assessment, the substantial assessment, having been made in the hands of the appellant's mother and even if there was a delay, should have called for a condonation petition and condoned the delay, in the interest of natural justice.*

*Appellant prays that the order of the Commissioner of Income Tax (Appeals) be set aside.”*

**4.** The appeal has been filed by the assessee before this Tribunal with a delay of 362 days and the assessee had submitted the reasons in the delay condonation affidavit and we have perused the reasons and satisfied that the assessee has a valid reason for not presenting the appeals before this Tribunal. We therefore condone the said delay of 362 days in filing the appeal before this Tribunal.

**5.** At the time of hearing, the Ld.AR submitted that the appeal was filed before the Ld.CIT(A) with a marginal delay of 39 days and by oversight, the assessee has not filed the delay condonation application before the Ld.CIT(A)

and submitted that the assessee is having a good case on merits since this assessment is only a protective assessment and already substantive assessment is made in the hands of the assessee's mother and prayed to allow the appeal.

The Ld.DR relied on the order of the Ld.CIT(A) and prayed to dismiss the appeal.

**6.** We have heard the arguments of both sides and perused the materials available on record.

**7.** As seen from the records, the delay is only a minimal but unfortunately, the assessee has not enclosed any application to condone this delay while filing the appeal before the Ld CIT(A). Further, the Registry also not pointed out the said mistake but admitted the appeal. Had the Registry directed the assessee to file petition to condone the said delay, the mistake could have been rectified by the assessee by filing the delay condonation petition. In such circumstances, we are inclined to set aside the order of the Ld.CIT(A) and remit the same to the file of Ld.CIT(A) with the direction to the assessee to file a condonation petition for the above said delay and in such event, the Ld.CIT(A) is directed to decide the same on merits in accordance with law after hearing the assessee.

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

Order pronounced in the open court on 20<sup>th</sup> December, 2024.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 20<sup>th</sup> December, 2024.  
/MS /

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|---------------|---------------------|
| 1. Appellant  | 2. Respondent       |
| 3. CIT        | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A)           |

By order

Assistant Registrar,  
ITAT, Cochin