

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 2003/Bang/2024
Assessment Year : 2015-16

Shri Bantupalli Varaprasad, Gandhinagar Village, Sindhanur Taluk, Raichur – 584 128. PAN: AFQPV3304P	Vs.	The Income Tax Officer, Ward – 1, Raichur.
APPELLANT		RESPONDENT

Assessee by	:	Shri G. Venkatesh, AR
Revenue by	:	Shri Subramanian, JCIT-DR

Date of Hearing	:	26-11-2024
Date of Pronouncement	:	20-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 20/08/2024 in respect of the A.Y. 2015-16 on the following grounds of appeal:

“1. The NFAC (Appeals), Delhi has erred in confirming the order u/s 147 passed by the learned Assessing Officer. The order passed being bad in law is required to be quashed.

2. In any case and without prejudice the order having been passed in total disregard of and in violation of the

principles of natural justice. makes the order bad in law and liable to be quashed.

3. The NFAC (Appeals) has erred in confirming the order passed u/s 147 without considering the withdrawals made from the bank accounts during the year. Such consideration being erroneous makes the order bad in law.

4. The NFAC has erred in confirming the treatment of the deposits as unexplained income u/s 69A by the learned Assessing Officer. Such confirmation is against the available facts of the case and liable to be deleted.

5. The NFAC has erred in not accepting the reason for delay in filing the appeal. The delay being with reasonable cause and not intentional is prayed to be condoned.

6. The NFAC has erred in not considering the peak balance theory and such failure means the order is bad in law and is liable to be quashed.

7. In view of the above and other grounds to be adduced at the time of hearing it is requested that the impugned order to be quashed.”

2. The brief facts of the case are that the assessee is an individual and not filed his return of income. Based on the information in the Insight Verification Portal under Non Filer (NMS Case), the revenue came to know that the assessee had deposited cash into his bank account but no return of income was filed by him and therefore notices u/s. 142(1) was issued on several occasions but the assessee had not replied to any of the notices and therefore a show cause notice was issued on 24/02/2023 for which also the assessee had not filed any submissions and therefore the assessment was completed u/s. 144 of the Act by treating the cash deposited into his bank account as unexplained money u/s. 69A of the Act. As against the said order, the assessee filed an appeal before the Ld.CIT(A) with a delay of 260 days and contended that the order was served on him on 19/07/2023 even though the said order was passed on 27/03/2023. Therefore the assessee prayed to condone the said delay and decide the appeal on merits. The Ld.CIT(A) not satisfied with the reasons stated for the said delay, had

dismissed the appeal on the ground of limitation. As against the said order, the assessee is in appeal before this Tribunal.

3. At the time of hearing, the Ld.AR submitted that the assessment order has been passed u/s. 147 without granting a reasonable opportunity to the assessee and therefore prayed one more opportunity to appear before the AO so that he will prove that the deposits are not unexplained money u/s. 69A of the Act. The Ld.AR further submitted that the notices sent by the AO was not received by him since it was sent to a wrong email ID. The Ld.AR further submitted that the AO had only taken the deposits but not considered the withdrawal made in the said bank accounts and therefore the order of the AO is not in accordance with law. The Ld.AR further submitted that the assessee has not well versed in viewing the portal as well as the email. The Ld.AR further submitted that only when the assessing officer had demanded the dues, the assessee immediately with the help of the auditors had opened the email on 19/07/2023 and found that the assessment order was available. Therefore the assessee had taken the date of service of the order as 19/07/2023 from which date the assessee has knowledge about the said order and filed the appeal on 12/01/2024 with a delay of 260 days. The Ld.AR further submitted that in view of the above said reasons, the assessee was not able to file the appeal in time and prayed to condone the said delay and remit the assessment to the file of the AO since the assessee had not responded to the notice issued by the AO.

4. The Ld.DR relied on the order of the lower authorities and further submitted that both the authorities below had given various opportunities to the assessee for representing his case. But the assessee disregarded the notices issued by authorities. Therefore, for want of proper representation, the authorities were bound to pass the ex-parte order and objected for granting another chance to the assessee.

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

6. As seen from the assessment order, the assessment was made based on the cash deposits made into the bank accounts of the assessee for which no proper explanation has been offered by the assessee and therefore the AO had made a best judgment assessment and treated the said deposits as unexplained cash u/s. 69A of the Act. The contention of the assessee is that the assessee is having an income from microfinance activities but also received interest from SBI account and therefore the huge addition made by the AO based on the entries in the bank account without considering the withdrawal is not correct. But unfortunately, the assessee has not appeared before the AO and filed the appeal with a delay of 260 days which was not condoned by the Ld.CIT(A) and therefore the authorities have no opportunity to decide the issue on merits.

7. By considering the fact that the AO had not decided the issue on merits and also the Ld.CIT(A) had not decided the issue on merits but dismissed the appeal on the ground of limitation, then in order to render substantial justice, we are inclined to set aside the order of the authorities below by condoning the delay in filing the appeal before the Ld.CIT(A) and remit this issue to the file of the AO for *denovo* consideration in accordance with law after hearing the assessee.

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

Order pronounced in the open court on 20th January, 2025.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 20th January, 2025.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore