

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

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

ITA No.2487/Bang/2024
AssessmentYear:2014-15

Louella Maria Albuquerque D.No.20-10-1110, Rosario Church Road Pandeshwar Mangalore 575 001 India PAN NO : ACYPA3962D	Vs.	ITO Ward-2(5) Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri Srinivas Kamath, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	16.04.2025
Date of Pronouncement	:	21.04.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 31.8.2023 vide DIN & order No.ITBA/NFAC/S/250/2023-24/1055634622(1) passed u/s 250 of the Income Tax Act, (in short “The Act) for the AY 2014-15.

2. The assessee has raised the following grounds of appeal:

	Grounds of Appeal	Tax effect relating to each Ground of appeal (see note below)
1	On the facts and circumstances of the case, the Authorities below erred in law by not giving the Appellant adequate opportunity of being heard and by not observing the principles of natural justice.	15,30,750
2	On the basis of the facts of the case, the Authorities below erred in not exercising due care in serving the notices to the appellant. The appellant was denied with a genuine opportunity to present the case, and thus this amounts to violating the principle of natural justice.	15,30,750
3	The Authorities below have failed to appreciate that principle of natural justice mandates that an opportunity to respond should be real and not merely ritualistic.	15,30,750
4	The Hon'ble CIT(A) erred by not applying due care to understand the specific circumstances of the appellant's case before completing the appeal ex-parte	15,30,750

5	The Authorities below erred in making addition of Rs..52,75,863 as Long-Term Capital Gains (LTCCG) as opposed to law and facts
6	Wrong Assessment Year: On the facts and circumstances of the case, the Authorities below erred in assessing the capital gains for AY 2014-15.
7	The Authorities below failed to recognize that the immovable property sold, included an inherited residential house. This oversight resulted in the incorrect computation of capital gains and the improper disallowance of the deduction under Section 54, which ought to be applicable to the residential property.
8	The Authorities below erred in arriving at the conclusion that the capital gain has arisen on transfer of land and the assessee being an individual is eligible to claim investment made in one residential house Under section 54F and no exemption is available under section 54.
9	The Authorities below have not appreciated the fact that the appellant has submitted her 1/5th share in the inherited residential house with land for development, and not just land. This fact is clear from copy of the Valuation Report of approved value submitted, the value of which has been accepted as fair market value as on 01-04-1981 for computing Capital Gain Without prejudice to what is stated above, the Learned Income tax Officer is not justified in denying deduction U s 54 as the provisions of Section 54 and section 54F are independent.
10	Exemption u/s 54F Without prejudice to the above facts and grounds, the authorities below, erred in restricting the exemption u/s 54F only to Rs. 52,75 863/-
11	The Learned Assessing officer has erroneously charged Interest u/s 234A and section 234B,234C and 234D of the Act
12	Initiation of Penalty Proceedings under section 271(1)(c). The Learned Assessing Officer has erred in initiating penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961, despite the Appellant furnishing accurate particulars of income.
Total tax effect (see note below)	

3. As submitted by the AR of the assessee, there is a delay of 416 days in filing the appeal before this Tribunal. The Id. Counsel

for the assessee drew our attention on the petition for condonation of delay along with an affidavit in original dated 18.2.2025 of the assessee, which are reproduced below for ease of reference and record:


सत्यमेव जयते

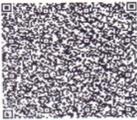
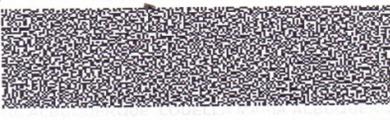
NOTARIAL REGISTER No. 708/2025
INDIA NON JUDICIAL 18/02/2025
Book No. I

Government of Karnataka

Rs. 100

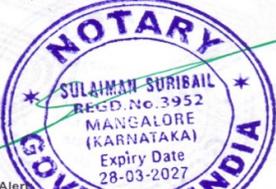
e-Stamp

Certificate No.	: IN-KA51206963365427X
Certificate Issued Date	: 13-Feb-2025 11:31 AM
Account Reference	: NONACC (FI)/ kacrsf108/ MANGALORE/ KA-DK
Unique Doc. Reference	: SUBIN-KAKACRSFL0834656678959319X
Purchased by	: LOUELLA MARIA ALBUQUERQUE
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: LOUELLA MARIA ALBUQUERQUE
Second Party	: N A
Stamp Duty Paid By	: LOUELLA MARIA ALBUQUERQUE
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

Please write or type below this line

Albuquerque



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Errors/Corrections Etc. *o/sdp*

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2. The onus of checking the authenticity is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

To,
The Bench

In the matter of,

Name of the Appellant	LOUELLA MARIA ALBUQUERQUE
PAN	ACYPA3962D
Assessment Year	2014 - 15
Subject	Application for condonation of delay in filing ITAT Appeal

AFFIDAVIT FOR CONDONATION OF DELAY

1. I, LOUELLA MARIA ALBUQUERQUE ('the Applicant', 'the Appellant') am a senior citizen aged 64 years residing in No.20-18-1110 Rosario Church, Mangalore. I am deriving income from rent, bank interest and agriculture.
2. It is humbly submitted that the appeal had been filed before The Commissioner of income Tax (Appeals) under section 250 of the Income Tax Act, 1961, on 22-06-2017
3. It is further submitted that all income tax issues were handled by my late husband only and even the notices related to the above faceless appeal were sent to his email address albuquerquefelix@gmail.com, as was the order.
4. Kindly note that I do not have access to the same and was not aware of the notices sent by CIT(A) (NFAC)
5. My husband passed away due to COVID-19 on 14-08-2021 and since he was looking after all the income tax issues, I was not even aware that appeal had been filed.
6. I am not aware of the latest income tax procedures and technical issues of the tax portal since I am a housewife and also a senior citizen, with not much knowledge in computers etc
7. It is further submitted that the above appeal filed before The Commissioner of income Tax (Appeals) (Faceless) under section 250 of the Income Tax Act, 1961 ('the Act'), bearing acknowledgement number 817563950220617 was disposed *vide* order dated 31-08-2023 bearing DIN ITBA/NFAC/S/250/2023-24/1055634622(1).

Albuquerque



Errors/Corrections Etc *Ans*

8. Since demise of my husband, I have been managing my affairs with help of my Consultants/Auditors.
9. Please note that I have not received any physical copies of the hearing notices or appeal order since there was no tax due since the entire tax had already been paid.
10. After the demise of my husband, I have filed the following returns :

AY	Date of Filing
2021-22	28-12-2021
2022-23	30-07-2022
2023-24	29-07-2023
2024-25	30-07-2024

The CIT order was passed on 31-08-2023, which was after filing my return of income for AY 2023-24.

11. It was only at the time of filing my tax returns for AY 2024-25, ie in July 2024, my auditors have observed that the appeal has been disposed by the Commissioner of income tax appeals vide order dt 31st August 2023.
12. Kindly note that due to audit season, my consultants/auditors took some time to draft the Form 36 and prepare the appeal. Thereafter, my auditors have forwarded the appeal for finalisation to another consultant in November 2024. The said new consultants took time to review the documents and finalise the same. Hence, the delay. Kindly note that the delay is not on account of the assessee and was due to reasons beyond her control, for which, it is sincerely requested not to penalise her and to condone the appeal and admit it.

Effectively there is only delay of 80 days as computed below

Date of CIT Order	31-08-2023
Deemed date of Service	31-07-2024
Deemed Due Date for filing Appeal	31-09-2024
Date of Form 36 Filed	19-12-2024
Effective Delay - as per assessee	80 days

13. I sincerely pray that I was not at all aware of the appeal/disposal of appeal and keeping in view my genuine facts and circumstances, request your good offices to kindly grant condonation of a delay of about 416 days in filing our appeal against the order of the Commissioner of income tax (Appeals) bearing DIN bearing DIN ITBA/NFAC/S/250/2023-

Albuquerque



Errors/Corrections Etc *airdr*

24/1055634622(1) dated 31st August 2023, for which I shall be highly obliged. Kindly condone the delay and admit the appeal.

14. In this connection, I wish to place reliance on the observations made by the Honorable Supreme Court in the case of Collector, Land Acquisition v. Mst. Katii and others

15. In light of the circumstances, I again request that the delay be condoned, and appeal against the order be admitted.

VERIFICATION

I, LOUELLA MARIA ALBUQUERQUE w/o FELIX JOHN JOSEPH ALBUQUERQUE, do hereby verify that the contents from paragraphs 1 to 15 above are correct and true to the best of my knowledge and belief.

Place: Mangalore

Date: 18-02-2025

Albuquerque
LOUELLA MARIA
ALBUQUERQUE



Errors/Corrections Etc. *only 18/2*

Sworn / Solemnly affirmed and signed before me on this *18th* day of *Feb* 2025.

Sulaiman S.
Notary, Mangaluru

SULAIMAN S., B.A., LL.B.,
ADVOCATE & NOTARY
(GOVT.OF INDIA)
Ground Floor, Capital Avenue Building
Opp. State Bank of India, Near D.C. Office
MANGALORE-575001

4. The ld. A.R. submitted that the delay is unintentional and no benefit can be attributed to the assessee in filing the appeal belatedly. He thus prayed for condonation of the delay and requested to consider the issues raised by the assessee on merits.

5. On the contrary the ld. D.R. vehemently objected for granting the condonation of delay and submitted that the assessee had neither appeared before the AO nor before the ld. CIT(A)/NFAC which clearly demonstrate the careless attitude of the assessee.

6. We have perused the details filed by the assessee to justify the delay and we are satisfied that there is no malafide intention on the part of the assessee in filing the appeal belatedly before us. It is to be noted that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it has established that there exists a sufficient cause on the part of the assessee for not presenting the appeals within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflect sufficient and reasonable cause on the part of the assessee in not filing these appeals within the prescribed time. On going through the affidavit as above, we find that the assessee could not file the appeal in time as the assessee being an senior citizen & house wife was not at all aware of the income tax procedures & technical issues of Income Tax Portal. Further her husband who was handling her income tax matters expired due to covid-19 on 14-08-2021 & all the notices were also sent to the email address of her late husband. In view of the above, we are of the opinion that there exists a sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time.

6.1 While considering a similar issue the 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 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.

6.2 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. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the application of the assessee for condoning the delay is rejected, it would amount to legalize injustice on technical ground when the Tribunal is

capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalizing an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorized by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalize an illegal and unconstitutional order passed by the lower authority.

6.3 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”.

6.4 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. We have to see the cause for the delay. 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. Accordingly, the Madras High Court condoned nearly 21 years of delay in filing the appeal. When compared to 21 years, **416 days** cannot be considered to be inordinate or excessive. 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. Therefore, in our opinion, by preferring the substantial justice, the delay of 416 days has to be condoned and accordingly we condone the delay and admit the appeal for adjudication.

7. Now coming facts of the case are that the assessee is a house wife and senior citizen aged 64 years deriving income from rent, bank interest and agriculture. As stated in her affidavit, the income tax matters were handled by her late husband and all the notices related to faceless appeal were sent to the e-mail address of her late husband and the assessee did not have any access to it and therefore, she was completely unaware of the notices sent by Id. CIT(A)/NFAC and accordingly she could not appear before the Id. CIT(A)/NFAC. Further, the Id. CIT(A)/NFAC dismissed the appeal of the assessee on the ground that the assessee did not submit any response to communications dated 23.1.2021, 19.4.2023, 23.6.2023 and 16.8.2023. Hence, in view of the aforesaid non-compliance/non-prosecution, the appeal was disposed of ex-parte on the basis of documents/details available on record.

8. We have heard the rival submissions and perused the materials available on record. On going through the affidavit sworn before the Notary dated 18.2.2025, the assessee as stated in her affidavit that the income tax matters were handled by her late husband and all the notices related to faceless appeal were sent to the e-mail address of her late husband and the assessee did not have any access to it and therefore, she was completely unaware of the notices sent by Id. CIT(A)/NFAC and accordingly she could not appear before the Id. CIT(A)/NFAC. This being so, we are of the considered opinion that in the interest of justice and fair play and

as requested by the Id. A.R. of the assessee, the entire issues in dispute are remitted back to the file of Id. CIT(A)/NFAC for fresh consideration in accordance with the law. Needless to say, a reasonable opportunity of being heard must be granted to the assessee. The assessee is also directed to update her e-mail ID/Contact number and address on the income tax web portal and cooperate with the proceedings before the first appellate authority. The assessee is also directed to submit all the relevant documents/records/evidences/information as called for in order to substantiate her claim. It is ordered accordingly.

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

Order pronounced in the open court on 21st Apr, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 21st Apr, 2025.
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.