

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

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

ITA No. 30/Bang/2025
Assessment Years: 2017-18

Usha Ramaswamy, H3, Epsilon Residential Villas, Yemalur Main Road, Off HAL Airport Road, Bengaluru – 560 037. PAN – AITPR 2132 H	Vs.	The Dy. Commissioner of Income Tax, Circle – 4(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Anand R Bhat, CA
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	25.02.2025
Date of Pronouncement	:	21.04.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The appeal filed by the assessee is against the order passed by the NFAC, Delhi dated 19/11/2024 in DIN No. ITBA/NFAC/S/250/2024-25/1070460162(1) for the assessment year 2017-18.

2. The relevant facts are that the assessee is an individual and filed return of income under section 139 of the Act declaring total income at Rs. 3,88,840/- only. The case of the assessee was selected for scrutiny under CASS. During the assessment proceedings the assessee, through authorized representative, submitted that during the year, she has

received a dividend income of Rs. 34,35,794/- on account of investments in equity shares but the same was not disclosed in the income tax return inadvertently. Thus, the assessee filed a revised self-assessed statement declaring the dividend income of Rs. 34,35,794/- after claiming exemption of Rs. 10 lakhs. The revised income was accepted by the AO without variation. However, the AO initiated penalty proceeding under section 270A of the Act on account of underreporting of income in consequence to misreporting. Finally, the AO passed the order levying penalty under section 270A of the Act as on 23-03-2022 wherein penalty of Rs 21,23,322/- being 200% of tax on underreported income was imposed.

3. The aggrieved assessee preferred an appeal before the learned CIT(A).

4. The learned CIT(A) found that the order levying penalty under section 270A of the Act was passed on 23rd March 2022 and as per the information provided in form 35 the impugned penalty order was received by the assessee as on 23rd March 2022 itself. Therefore, the assessee as per the provision of section 249(2) of the Act was required to file the appeal within 30 days from the date of receipt of the order. However, the assessee filed the appeal on 23rd May 2022 which is beyond the prescribed time limit. Nevertheless, the assessee has neither accepted the delay in filing of appeal nor provided any reason for such delay. Accordingly, the learned CIT(A) held that if the legislator has provided certain time limit for fulfillment of certain obligations, then such obligations shall be duly complied with within the prescribed time limit. Therefore, the learned CIT(A) in absence of reason for delay in appeal

filing and in absence delay condonation request, dismissed the appeal of the assessee as not admissible.

5. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

6. The learned AR for the assessee before us submitted that the Id. CIT(A) has not appreciated the factual position or documentary evidence on record and has passed the order in complete disregard of the principles of natural justice. The appeal was dismissed on an incorrect presumption that the appellant had not sought condonation of delay, without giving due consideration to the detailed submissions and application filed by the appellant for such condonation. Moreover, the dismissal of the appeal without granting an opportunity of being heard violates the principle of audi alteram partem and natural justice. The appellate order has been passed without addressing the substantive issues raised in the appeal, and hence, deserves to be set aside. Thus, the appellate order passed by the learned CIT(A), is arbitrary, erroneous, bad in law, and therefore liable to be quashed.

6.1 In addition, the learned AR submitted that the penalty order dated 23rd March 2022 passed by the AO, under section 270A of the Act, is also arbitrary and bad in law. The learned AO has failed to consider the factual position and documentation submitted during both the assessment and penalty proceedings. The appellant had voluntarily reported the dividend income, and the initiation of penalty proceedings without any valid basis is untenable. The AO did not consider the application filed under section 270AA of the Act on 27th January 2020,

and proceeded to issue the penalty order after the expiry of the statutory limitation period, rendering the order invalid and unsustainable. Furthermore, the AO has wrongly applied a tax rate of 30.9% to the dividend income instead of the concessional rate of 10% under section 115BBDA of the Act. This has resulted in an inflated and incorrect penalty demand amounting to Rs. 21,23,322. The initiation and imposition of penalty proceedings under section 270A are thus not only procedurally flawed but also unjustified on merits, as the case does not fall within the purview of underreporting or misreporting of income as defined under the Act.

7. On the other hand, the learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both parties and perused the materials available on record. It is observed that the appeal filed by the assessee before the learned CIT(A) was dismissed solely on the ground of delay in filing, without adjudication on merits. The learned CIT(A) noted that the appeal was filed beyond the prescribed time limit as per section 249(2) of the Act and proceeded to dismiss the same on the assumption that no condonation application had been filed. However, the record reveals that the assessee had, in fact, submitted a detailed application for condonation of delay, which is placed at page 102 of the paper book. The learned CIT(A) has not considered or discussed this condonation application in the impugned appellate order.

8.1 In view of the above, we find merit in the contention of the assessee that the dismissal of the appeal without considering the

condonation application amounts to violation of the principles of natural justice. The learned CIT(A) was duty-bound to consider the condonation application on its own merits and record a reasoned finding thereon before proceeding to admit or dismiss the appeal. Accordingly, in the interest of justice, we deem it appropriate to set aside the impugned appellate order passed by the learned CIT(A) and restore the matter to the file of the Id. CIT(A). The CIT(A) is directed to first consider the assessee's application for condonation of delay in accordance with law, and, upon condoning the delay, proceed to adjudicate the appeal on merits after affording due opportunity of being heard to the assessee. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court on 21st day of April, 2025

Sd/-
(SOUNDARARAJAN K)
Judicial Member

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 21st April, 2025

/ vms /

Copy to :

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

By order

Asst. Registrar, ITAT, Bangalore