

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.815/Coch/2024
AssessmentYear:2017-18

Classic Pharma 42/672B, Civil Station Ward Alappuzha 688 001 Kerala  <b>PAN NO :AAKFC0215F</b>	<b>Vs.</b>	NFAC Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri R. Krishnan, A.R.
<b>Respondent by</b>	:	Smt. Leena Lal, Sr. D.R.

<b>Date of Hearing</b>	:	30.01.2025
<b>Date of Pronouncement</b>	:	24.04.2025

**O R D E R**

**PERKESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of assessee is directed against the order of the Id. CIT(A)/NFAC dated 20.8.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1067776481(1)for the AY 2017-18 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

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

- 1) The learned CIT(A) erred in rejecting the reasons mentioned by the appellant in the condonation of delay filed and dismissing the appeal for the reasons stated by him in his order.
- 2) The learned CIT(A) ought to have considered the fact that the failure to file the appeal on time is on account of the mistake made by the assessing officer in mentioning 'NIL' demand in the demand notice, which led to the appellant believing that the submissions raised in assessment were accepted.
- 3) The learned CIT(A) failed to consider the background of the case that the appellant's business for the year under consideration was run by one of the sons of the partner, who passed away due to an accident. After his passing away, the business was shut down. The other partner was an uneducated senior citizen, living in a rented house, with her bedridden husband and had absolutely no source of income on her own and living with the help of others.
- 4) The learned CIT(A) ought to have considered the fact that, having served a 'NIL' demand notice, and considering the background of the appellant, it is absolutely wrong in expecting the appellant to go through the entire assessment order and understand that certain additions are made in assessment. This is certainly a reasonable cause.
- 5) The learned CIT(A) failed to note that the facts and circumstances of the several judicial pronouncements mentioned in the order differ from the facts of the appellant's case and cannot be used as a precedence to determine the fate of the appeal filed.
- 6) The learned CIT(A) completely failed to appreciate the circumstances which led to the delay in filing appeal and he went wrong in stating in Para 2.8 of his order that the appellant is using 'ignorance of law' as an excuse, which is not the case of the appellant.
- 7) The action of the learned CIT(A) in dismissing the appeal filed in limine is illogical, against the spirit of law and intent of the statute, thereby denying natural justice to the appellant.

(Contd.....2)

- 8) Without prejudice to the above, the learned CIT(A) has not gone into the merits of the case before proceeding to dismiss the appeal for trivial reasons.
- 9) The learned CIT(A) ought to have noted that the addition made in assessment is purely an estimation, with no comparison whatsoever. Several courts have consistently held that estimation of profits without any basis is bad in law.
- 10) Appellant craves leave to add, alter, amend, or vary and/or withdraw any or all of the aforesaid grounds of appeal or at the time of hearing of the above appeal.

**2.** Before us, both the parties fairly conceded that there is a delay of 145 days in filing the appeal before the Id. CIT(A), which is not condoned by the Id. CIT(A) on the ground that the assessee has not discharged the onus of "sufficient cause" within the meaning of section 249 of the Act. Hence, the delay in filing of appeal more than 4 months was not accepted by the Id. CIT(A)/NFAC and accordingly,

without going into the merits of the case dismissed the appeal of the assessee.

**3.** We have heard the rival submissions and perused the materials available on record. On going through the grounds for condonation of delay filed before the CIT(A)/NFAC, in our opinion, it cannot be said that assessee is very callous in its approach in filing the appeal before the Id. CIT(A). 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.*

**3.1** 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.

**4.** This being so, we condone the delay in filing the appeal before the ld. CIT(A)/NFAC and direct the ld. CIT(A)/NFAC to admit the appeal for adjudication and accordingly we remit the entire issue in dispute to the file of ld. CIT(A)/NFAC to decide afresh in accordance with the law. Needless to say, reasonable opportunity of being heard to the assessee must be granted to the assessee. It is ordered accordingly.

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

Order pronounced in the open court on 24<sup>th</sup> Apr, 2025

**Sd/-**  
**(Inturi Rama Rao)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**JudicialMember**

Bangalore,  
Dated 24<sup>th</sup> 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, Cochin.**