

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

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1304/Bang/2025
Assessment Year : 2017-18

Sri Muniswamy Raju Prop: Sri Ganesh Blue Metals Bisalavadi village & post Chamarajanagar 571 313 Karnataka  <b>PAN NO : AKXPR5080N</b>	<b>Vs.</b>	ACIT Circle-1(1) & TPS Mysore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Sri Subramanian, D.R.

<b>Date of Hearing</b>	:	19.08.2025
<b>Date of Pronouncement</b>	:	26.08.2025

**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. Addl/JCIT(A), Prayagraj dated 6.12.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1070978043(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2017-18.

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

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A]/NFAC erred in disposing off the appeal without allowing proper and effective opportunity to the appellant in course of the appellate proceedings under the facts and circumstances of the appellant's case.

3. The learned CIT[A]/NFAC is not justified in upholding the ad-hoc disallowance of Rs. 4,02,758/- U/s 37 of the Act being the 10% of the expenses claimed under the head maintenance of machinery and maintenance of vehicle under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A]/NFAC is not justified in upholding the disallowance of Rs. 21,12,713/- U/s 40[a][ia] of the Act towards non-deduction of TDS being 30%

of the expenses incurred towards compressor hire charges, tipper hire charges under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s 234-A, 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. At the outset, there is a delay of 91 days in filing the appeal before this Tribunal. Before us, the Id. A.R. of the assessee drew our attention to an affidavit in original dated 12.6.2025 filed by the assessee stating therein the reasons for delay in filing the appeal, which are reproduced below for ease of convenience and reference:



**INDIA NON JUDICIAL**

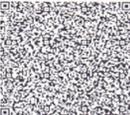
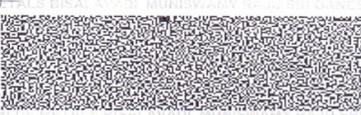
**Government of Karnataka**

सत्यमेव जयते

Rs. 100

**e-Stamp**

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Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: MUNISWAMY RAJU SRI GANESH BLUE METALS BISALAVADI
Second Party	: INCOME TAX APPELLATE TRIBUNAL
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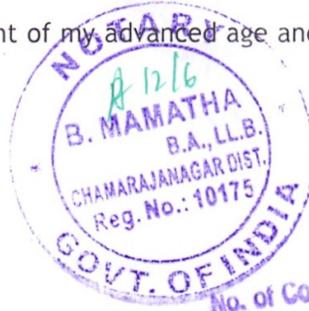
BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE "B" BENCH, BANGALORE

SRI MUNISWAMY RAJU, PROP: M/s. SRI GANESH BLUE METALS, BISALAVADI VILLAGE AND POST, <u>CHAMARAJANAGAR - 571 313.</u> [A P P E L L A N T]	Vs	THE ASST.COMMISSIONER OF INCOME-TAX, CIRCLE - 1[1] & TPS, <u>MYSORE.</u> [R E S P O N D E N T]
ASSESSMENT YEAR	...	2017 - 18
APPEAL AGAINST THE ORDER U/s	...	143[3] of the Act
IN THE MATTER OF ITA NO.	...	1304/BANG/2025

AFFIDAVIT FOR CONDONATION OF DELAY IN FILING THE APPEAL

I, MUNISWAMY RAJU, son of Sri Muniswamy, aged about 76 years, residing at Chamarajanagar, being conversant with the facts of the case do hereby solemnly affirm and say on oath as under:-

1. That, being aggrieved by the order of the learned Commissioner of Income-tax[Appeals], National Faceless Appeal Centre, DELHI dated 06/12/2024, the second appeal before the Hon'ble Tribunal ought to have been filed on or before 05/02/2024.
2. That, the second appeal against the appellate order passed by the learned Commissioner of Income-tax[Appeals], National Faceless Appeal Centre, DELHI filed before the Hon'ble Income-tax Appellate Tribunal on 30/05/2025 and thus, there is a delay of 91 days in filing the appeal. The reasons for the delay in filing the appeal are explained hereinafter.
3. That, I was not aware of the said appellate order passed by the learned CIT[A] in as much as the same was not served upon me physically and furthermore, I am not conversant with emails and other electronic means of communication on account of my advanced age and require the assistance of a



M. Raju  
+

No. of Corrections... Nil

third person to access my mails and hence, I was not aware of the order passed by the learned CIT[A] and I was under the bonafide impression that the said appeal was pending disposal.

4. That, recently, I have received the call from the Income-tax Department to pay the arrears of disputed demand for the aforesaid assessment year and immediately I have contacted my authorized representative Sri S.Lakshminarasimha, Chartered Accountant, Mysore and he logged into my e-filing portal and noticed that the appeal filed against the order u/s.143[3] of the Act was dismissed by the learned CIT[A] by the order dated 06/12/2024.

5. That, thereafter, my authorized representative advised me to approach Sri. V Srinivasan, Advocate, Bangalore to seek further advise in the matter, who upon going through the papers advised me to file a second appeal immediately by seeking condonation of delay.

6. That, accordingly the appeal papers were immediately prepared and filed before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore without any further delay.

7. That there is a delay of 91 days in filing the appeal before the Hon'ble Tribunal based on the date of the appellate order, which delay is due to reasonable cause and on account of circumstances beyond my control and the delay was neither intentional, willful nor deliberate and was occasioned for the reasons stated above.

8. That, it is, therefore, prayed that the delay of 91 days in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.



**4.** 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 appeal 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 the appeal within the prescribed time. We have gone through the reasons explained by the assessee in which the assessee stated that he was completely unaware of the said appellate order passed by the Id. ADDL/JCIT(A) in as much as the same was not served upon him physically and furthermore, being a senior citizen of aged 76 years, he is also not conversant with emails and other electronic means of communication and requires the assistance of a third person to access his mails and hence, he was not aware of the order passed by the Id. ADDL/JCIT(A) and he was under the Bonafide impression that the said appeal was still pending for disposal. It is only when he received the call from the department to pay the arrears of disputed demand for the aforesaid assessment year, he immediately, contacted his authorized representative who noticed that the appeal filed against the order passed u/s 143(3) of the Act was dismissed by the Id. ADDL/JCIT(A) by passing the order dated 6.12.2024 and thereafter, he approached the present counsel to take necessary action.

**4.1** We are of the considered opinion that 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.*

**4.2** 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. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue.

Therefore, in our opinion, by preferring the substantial justice, the delay of 91 days has to be condoned & we condone the delay & admit the appeal for the adjudication.

**5.** Now on going through order of assessment passed u/s 143(3) of the Act dated 25.12.2019, we take a note of the fact that as observed by the AO, the assessee did not furnish complete details and accordingly the AO for lack of proof disallowed 10% of total expenses claimed under maintenance of machinery & vehicle amounting to Rs.4,02,758/- (40,27,586/- x 10/100). Further, the AO also observed that the assessee had not given any supporting documents and proof as evidence for TDS made on the payments like Compressor Hire Charges, Tipper Hire Charges, Hitachi & JCB Hire charges. The AO in this context, treated as non-deduction of TDS and held the assessee deemed to be default as per section 201 of the Act and thereby attracting the provisions of section 40(a)(ia) of the Act and accordingly disallowed 30% of expenses claimed amounting to Rs.70,42,379/- i.e. Rs.21,12,713/- u/s 40(a)(ia) of the Act and added back to the total income of the assessee under the head "Profits & Gains of business or profession".

**5.1** We also observe that the ld. ADDL/JCIT(A) dismissed the appeal filed by the assessee both on its merits and due to non-prosecution on the ground that there was no compliance before ld. Addl/JCIT(A), Prayagraj.

**5.2** Before us, ld. A.R. of the assessee vehemently submitted that the assessee is a senior citizen aged 76 years and he is also not conversant with the e-mails and other electronic means of communication on account of advanced age and accordingly prayed that one more opportunity may be granted before the ld. ADDL/JCIT(A) to substantiate his claim. This being so, in the

interest of justice and fair play and as requested by ld. A.R. of the assessee, we remit the entire issue in dispute to the file of JAO to decide afresh in accordance with law. Needless to say a reasonable opportunity of being heard must be granted to the assessee. The assessee is also directed to produce all the relevant documents/records/information/financials in support of his claim. It is ordered accordingly.

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

Order pronounced in the open court on 26<sup>th</sup> Aug, 2025

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 26<sup>th</sup> Aug, 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.**