

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

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

ITA No.860/Bang/2025
Assessment Year: 2017-18

Nitesh Kekre, D 401, DNR Reflection Outer Ring Road, 833/33, Ibbalur, Bellandur S.O., Bellandur, Bengaluru – 560 103. PAN – AFMPK 8124 N	Vs.	The Dy. Commissioner of Income Tax, Circle – 3(3)(1), Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Navaneeth N Kini, CA
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	23.06.2025
Date of Pronouncement	:	26.08.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT(A)-3, Ahmedabad vide order dated 26/02/2025 in DIN No. ITBA/APL/S/250/2024-25/1073750024(1) for the assessment year 2017-18.

2. The effective issue raised by the assessee is that the learned CIT(A) erred in dismissing the appeal on account of delay and not providing the credit of foreign tax credit on the merit.

3. The relevant facts are that the assessee is an individual deriving income from salary, capital gain and interest etc. The assessee for the A.Y. 2017-18 filed return of income as on 27th July 2017 declaring income at Rs. 2,06,36,780/- which included income earned outside India. The assessee against the tax liability claimed credit of foreign tax of Rs. 81,178/- only. The claim of foreign tax credit (FTC) was disallowed by the CPC while processing the return under section 143(1) of the Act for the reason that Form-67 was not filed along with return of income. The order under section 143(1) of the Act (intimation order) was generated as on 30th March 2019. The assessee claimed that intimation order was not received, and he became aware about the same only when a notice for outstanding demand based on intimation order was issued. It is further claimed that he was not able to download the intimation order from portal also and in this regard made several communications with e-nirvanan service of the portal and with help desk. Finally, he was able to download the intimation order as on 3rd March 2021. Only, then it was known to him for the reason of the demand. The assessee further claimed that he was under the impression that the issue of allowances of FTC will get resolved only at CPC level and therefore, not preferred to file the appeal before the Id. CIT(A).

4. The assessee filed rectification application for allowances of FTC and raised grievance with e-nivaran against the demand but did not get the relief. Hence the assessee filed appeal before the learned CIT(A) as on 5th May 2022. The assessee submitted that the delay in filing of appeal was beyond his control on ground of the reason explained in previous paragraph.

5. However, the learned CIT-A after considering the submission of the assessee dismissed the appeal in limine on account of time barring appeal. The relevant observation of the learned CIT(A) reads as under:

7.2 *The submissions of the appellant are considered but found to be not acceptable for the reason that the appellant should have consulted the accountant first after getting the order u/s 143(1) or u/s 154 of the I.T. Act and appeal should have been filed first. Being an experienced tax payer assessee should be more careful regarding filing the appeal. In this case, the date of order u/s 143(1) is 30.03.2019 and the due date of filing the appeal was 29.04.2019 instead of 30 days of filing of appeal, the appellant has filed on 05.05.2022. Thus there is a gap of more than 36 months without substantiating the delay for filing the appeal.*

7.3 *Even the appellant has paid the appeal fee of Rs 1000/- on 29.04.2022 beyond the due date of filing of appeal which also proved that the fee payment has not been made before due date of filing of the appeal i.e. on 29.04.2019.*

7.4 *In absence of good and justifiable reasons for delay in filing the appeal, the appeal filed belatedly is held to be not maintainable and therefore, the same is not entertained and dismissed. This view is supported by the following decision / Judgement.*

7.5 *In this regard the decision of the Hon'ble Mumbai Tribunal in the case of Prashant Projects Ltd Vs DCIT (2013) 37 taxman.com 137 is significant which is in favor of revenue holding that by adopting a liberal view in condonation of delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a license to the appeals at will-disregarding the time-limits fixed by the statutes.*

7.6 *Further, hon'ble Apex court in the case of Vedabai Alias Vajjyanatabai Baburao Patil Vs Shante ram Baburao Patil 253 ITR 798, It was held as follows-*

"In exercising discretion under section 5 of the limitation Act, the Court should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may be arises and such case deserves a liberal approach."

7.7 *Further, ITAT Chennai in the case of JCIT Vs tractors and farm Equipment Ltd it was held as under:-*

"The delay cannot be condoned simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the appellant or beyond the negligence and compliant. Be that as it may, the delay beyond a certain limit is inexcusable. The party invoking the aid of the limitation provision must show that the sufficient cause within the meaning of the said provision was not guilty of negligence, nor inaction, or want of bonafides can be imputed to the appellant. A liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clear hands."

7.8 *In view of the above discussions and decisions, the request for condonation of delay is rejected as the same is not maintainable in view of the*

provisions of Section 249(2) of the I.T Act and therefore the appeal is dismissed.

Since the appeal has been found not maintainable as per discussion made in the preceding paras, therefore no decision on merits of the grounds of appeal is given.

8. *In the result, the appeal is dismissed.*

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

7. The learned AR before us filed a time line of events starting from the filing of return to rejection of appeal by learned CIT(A). The learned AR submitted that the delay in filing the appeal before the first appellate authority was for the reasons completely beyond the control of the assessee. He explained that the intimation under section 143(1) dated 30.03.2019 was not available to the assessee and could not be downloaded until 03.03.2021, which was during the Covid pandemic exclusion period. Immediately thereafter, on 20.03.2021, the assessee filed a rectification application for granting foreign tax credit under section 90 of the Act. However, this rectification request was rejected on 23.03.2021 without assigning any reasons. The assessee then filed an online rectification application on 23.04.2021, but this was not disposed of until the assessee filed the present appeal on 05.05.2022, which was within the extended time limit granted by the Hon'ble Supreme Court during the pandemic.

7.1 The AR further contended that the assessee was acting under a bona-fide belief that the issue was one of rectification and not of appeal, as it related only to grant of foreign tax credit. He submitted that filing of Form 67 was not mandatory for AY 2017-18, since the CBDT notification introducing such a requirement was issued only on

19.09.2017, after the due date for filing return for AY 2017-18. Therefore, the disallowance of foreign tax credit merely on the ground of non-filing of Form 67 was unjustified.

7.2 The Id. AR argued that the Id. CIT(A) erred in dismissing the appeal as time-barred by 36 months. He submitted that the assessee had relied upon the directions of the Hon'ble Supreme Court in extending limitation during Covid and had made every possible effort to get the issue resolved by rectification before filing an appeal. Hence, the delay was sufficiently explained.

7.3 He also submitted that the denial of foreign tax credit of ₹ 81,178/- was against the principles of natural justice. The obligation of the revenue was to grant the credit for taxes already paid abroad once the assessee had disclosed the claim in the return of income. The Id. AR relied on decisions of the coordinate benches of the Tribunal in the case of Ms. Brinda Ramakrishna (ITA No. 454/Bang/2021) and M/s. 42 Hertz Software India Pvt. Ltd. (ITA No. 29/Bang/2021), where it was held that filing of Form 67 within the due date is not a mandatory condition for granting foreign tax credit. In the present case also, since Form 67 was eventually filed, the assessee cannot be denied the benefit.

8. On the other hand, the learned DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The short issue before us is whether the learned CIT(A) was justified in dismissing the appeal on the

ground of delay and without considering the matter on merits. It is evident from the facts that the assessee had genuine difficulty in accessing the intimation under section 143(1) of the ACT, which could be downloaded only on 03.03.2021, much after its date of issue, and within the Covid pandemic exclusion period. Thereafter, the assessee promptly filed a rectification application on 20.03.2021 and even lodged an e-Nivaran grievance. When no resolution came, and the limitation extended by the Hon'ble Supreme Court in force, the assessee filed the appeal on 05.05.2022. These facts show that the assessee was diligently pursuing his remedies and the delay was occasioned due to reasons beyond his control.

9.1 We also note that the assessee was under a bona fide belief that the issue related to rectification, since it was only a matter of granting foreign tax credit, and therefore initially attempted to resolve it at the CPC level. In such circumstances, the dismissal of the appeal by the Id. CIT(A) without examining the merits amounts to denial of justice. The Hon'ble Supreme Court has repeatedly emphasized that substantive justice should not be sacrificed at the altar of technicalities.

9.2 In view of the above, we are of the considered opinion that the assessee has shown sufficient cause for delay. The dismissal of the appeal by the Id. CIT(A) is therefore set aside. We direct the learned CIT(A) to condone the delay and adjudicate the appeal afresh on merits, after providing due opportunity of hearing to the assessee. Accordingly, the matter is restored to the file of the Id. CIT(A) for fresh consideration on merits. Hence the grounds of appeal raised by the assessee are treated as allowed for statistical purposes.

10. In the result appeal of the assessee is hereby allowed for statistical purposes.

Order pronounced in court on 26th day of August, 2025

Sd/-

(KESHAV DUBEY)

Judicial Member

Sd/-

(WASEEM AHMED)

Accountant Member

Bangalore

Dated, 26th August, 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