IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC"BENCH: BANGALORE

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

ITA No.605/Bang/2025
Assessment Year :2017-18

Basavanneppa Guledakeri 16, Sadashivapet Narayanaput, Shiggaon Haveri – 581202 Karnataka **PAN NO :BMFPG9208Q**	**Vs.**	Income Tax Officer Ward – 2 Haveri
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Sandeep Chalapathy, CA
Department by	:	Shri Ganesh R. Ghale, Advocate, Standing Counsel for Revenue

Date of Hearing	:	18.06.2025
Date of Pronouncement	:	15.09.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the Ld.CIT(A)/NFAC dated 07.11.2024vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1070179121(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. That the order of the learned lower authorities in so far it is prejudicial to the interests of the appellant, is bad and erroneous to the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) ought to have exercised the powers amended in provisions of section 251 of the Act and remanded back the case to the assessing officer to

verify the facts after affording reasonable opportunity to the appellant.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the addition of Rs. 18,01,000/- as Unexplained money u/s. 69A of the Act.

4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not considering the fact that the appellant is holding the agricultural land and earned income from agricultural activities which are the sources for cash deposits made in his bank accounts.

5. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not considering the fact that the appellant is having savings from the agricultural income from earlier years which is the source for cash deposits.

6. Without prejudice to the above grounds of appeal, that the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not assessing a reasonable income and savings based on the agricultural land held and crops grown by the appellant which is already available on record.

7. Without prejudice to the above grounds of appeal, that the learned lower authorities erred in law and on facts in applying the amended provisions of section 115BBE of the Act even though the said provisions are applicable from 01.04.2017 i.e financial year 2017-18."

3. At the outset, the ld. A.R. of the assessee submitted that there is an actual delay of 49 days in filing the appeal before this Tribunal, however the assessee in his condonation application had inadvertently mentioned the delay as 74 days. Further, the ld. A.R.

of the assessee also drew our attention on an application for condonation of delay dated 21.03.2025 thereby stating the cause for such delay which is reproduced below for ease of reference and record:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL, BANGALORE

Basavanneppa Guledakeri		Income Tax Officer
16 Sadashivapet ,Narayanapur		Ward 1
Shiggaon,		Haveri
Haveri - 581202		
(Appellant)	Vs	(Respondent)

APPLICATION SEEKING CONDONATION OF DELAY

(Assessment Year 2017-18)

The appellant herein seeks the leave of the Hon'ble Income tax Appellate Tribunal to file following application seeking condonation of delay.

The appeal order u/s. 250 of Income-tax Act, 1961 (Act) dated 07.11.2024 was passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi deciding the appeal against the assessee and the appeal ought to have been filed on or before 31.01.2025 with the Hon'ble Income Tax Appellate Tribunal, Bangalore. However, the appeal is being filed with a delay.

The reason for the delay in filing the appeal is that the consultant who preferred an appeal before the CIT(A) advised the assessee to get more information and documentary evidences regarding the sources for cash deposits apart from the submissions already made. Hence, it took some time to the assessee to collate the information and documentary evidence to file the appeal.

In view of the above, the appellant prayed the Hon'ble Income Tax Appellate Tribunal be pleased to condone the delay of 74 days and admit the appeal for deciding the case of merits in the interest of equity, justice and good conscience.

Place : Haveri

Date : 21.03.2025

B.S. ಗುಡಿಕೇರಿ

x Appellant

4. On going through the above application for condonation, we find that the assessee could not file the appeal in time for the reason that the assessee's consultant who preferred an appeal before the ld. CIT(A) advised the assessee to get more information and documentary evidences regarding the sources for cash deposits apart from the submissions already made. Hence, it took some time to the assessee to collate the information and documentary evidence to file the appeal. The ld. A.R. also submitted that the delay is unintentional and no benefit can be attributed to the assessee in filing the appeal belatedly. He thus prayed to condone 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.

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 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 these appeals 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 nondeliberate 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, 49 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 49 days

has to be condoned and accordingly we condone the delay and admit the appeal for adjudication.

7. Now brief facts of the case are that on the basis ofthe data analytics and information gathered during the phase of online verification under "Operation Clean Money", it was revealed that the assessee had deposited cash of Rs.18,01,000/- in his HDFC bank account no.50200007817909 during the FY 2016-17 including Rs.12,20,500/- deposited during the demonetization period. The assessee did not file any return of income for the AY 2017-18 and accordingly a notice u/s. 1442(1) of the Act was issued calling for filing the return of income however, the assessee did not file the return even in response to notice u/s. 142(1) of the Act. Further in response to show cause notice, the assessee filed his submissions stating that he is an agriculturist and source of said cash deposits are out of such agricultural income. The assessee had also produced copies of the statements showing cash deposits in bank, cash sales and analysis of month wise cash sales and cash deposits from 01.04.2015 to 08.11.2015 and from 01.04.2016 to 08.11.2016. The assessee had also submitted pahnis of the agricultural lands to the extent of 36 Acres and 34 Guntas. The assessee claimed to have grown maize, cotton, ground nuts, soya been, greenchili, jowar, kusubi and wheat etc. on such land and also furnish the statement showing yield, quantity, rate, total amount of sales etc.

7.1 The AO, however, did not accept the source of income as agriculture by holding that due to severe drought conditions in the area, the genuine agriculturist are actually incurring losses in agriculture and also under debts to various banks. Further, the AO observed that if the assessee's claim is genuine then it is not known

what prevented the assessee from filing the return of income declaring such agricultural income for any of the earlier assessment years. Lastly, the AO on going through the pahnis of the agricultural land submitted by the assessee noticed that on the one piece of land of 05 Acres and 13 Guntas, the details of crops grown during the FY 2016-17 is shown as "Soyabeen" during the monsoon season and for the rest of the season, the information furnished is "No crop information". For the rest of pahnis, the AO noticed that the information did not relate to FY 2016-17.

7.2 As the assessee's claim of agriculture income was not accepted by AO, the entire cash deposited into the bank accounts during the F.Y 2016-17 relevant for the A.Y 2017-18 amounting to Rs.18,01,000/- was considered as unexplained money u/s. 69A of the Act and accordingly brought to tax.

8. Aggrieved by the order passed by the AO u/s. 144 of the Act dated 05.11.2019, the assessee preferred an appeal before the ld. CIT(A)/NFAC.

9. The ld. CIT(A)/NFAC dismissed the appeal of the assessee on the ground that assessee had failed to make any submissions in support of his grounds of appeal which gave rise to an undisputable conclusion that the assessee had got nothing more to say in this regard. Further, the appellate authority after going through the record held that ground no. 01 to 16 as raised by the assessee are untenable and hence rejected.

10. Again,being aggrieved by the order of ld.CIT(A)/NFAC, the assessee has filed the present appeal before this Tribunal.

11. Before us, the ld. A.R. of the assessee vehemently submitted that during the course of assessment proceedings, the assessee had

produced statement showing cash deposits in bank, cash sales and analysis of month wise cash sales. Further, the assessee had also submitted pahnis of agriculture lands extent of 36 Acres and 34 Guntas along with the details of crops grown showing yield, quantity, rates, total amount of sales etc. and therefore the addition made u/s. 69A of the Act as unexplained money is purely based on the guess & surmises & without any adverse material on record.

12. The ld. D.R. on the other hand relied on the order of authorities below more specifically para 7.2 of the order of the AO and submitted that assessee did not have any sources for depositing the cash of Rs.12,20,500/-to his bank account on 12.11.2016.

13. We have heard the rival submissions and perused the material available on record. It is an undisputed fact that assessee had not filed any return of income for the AY 2017-18 however, deposited the total cash of Rs.18,01,000/- in HDFC Bank during the F.Y. 2016-17 including 12,20,500/- deposited during the demonetization period. On going through the assessment order, we take note of the fact that assessee in his submission dated 13.09.2019 submitted that the assessee is an agriculturist and source of said cash deposits are out of such agriculture income. We also take a note of the fact that the assessee had also produced copies of the statements showing cash deposits in bank, cash sales and analysis of month wise cash sales and cash deposits from 01.04.2015 to 08.11.2015 and from 01.04.2016 to 08.11.2016. The assessee had also submitted pahnis of the agricultural lands to the extent of 36 Acres and 34 Guntas. Before the AO, the assessee claimed to have grown maize, cotton, ground nuts, soya been, green chili, jowar, kusubi and wheat etc. on such land and also furnish the statement showing yield, quantity, rate, total amount of sales.

Thus, in our view the assessee has fully explained the sources of cash deposits by submitting the details in order to substantiate his claim. The AO based on certain presumptions and conjectures did not accept the contentions of the assessee by holding that due to severe drought conditions in that area, the genuine agriculturist were actually incurring losses in agriculture and also debts to various banks. We are surprised to note that the AO went to the extent of news published in the media with regard to suicides by the farmers.Further, we also could not understand if the source of income of the assessee is only the agriculture income which are exempt u/s. 10(1) of the Act, then under which provisions of the Act the assessee is required to file the Return of Income.We are also surprised to note that even the ld. CIT(A)/NFAC is of the view that although the agricultural income may be exempt from tax but it is not provided in the law that the assessee having the agricultural income is exempt from filing of income tax return. Further, we also take a note of the fact that AO is not at all disputing that the assessee does not have agriculture lands to the extent of 36 acres and 34 guntas but merely based on information contained in the pahnis held that some information does not relate to FY 2016-17 and some details of crops grown during the FY 2016-17 shown as Soyabeen.We are of the consider opinion that the AO has not brought any specific material on record to show that the source of income is not from agricultureactivities. In our view the assessee has submitted various details before the AO to established the facts that he is an agriculturist and the sources for said cash deposits are out of such agriculture income.Once the assessee has established the source of income as agriculture, it is now the onuson the AO either to accept such explanation or reject the claim of the assessee with substantive evidence by bringing any adverse material on record which in our opinion the AO failed to do so.

Therefore, we find no reasons not to accept the contentions of the assessee and accordingly and we are inclined to held the source of cash deposits were out of agriculture income earned by the assessee and accordingly we delete entire additions of Rs.18,01,000/- as made by the AO u/s 69A of the Act.Accordingly, we allowed the grounds of the assessee.

14. In the result, the appeal filed by the assessee is allowed

Order pronounced in the open court on 15th Sept, 2025

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated: 15th Sept,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.