

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

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

ITA No. 519/Bang/2025
Assessment Year : 2012-13

Sasalu Nagaraju Satheesh #51, Samskruthi Nilaya Shivanandappa Layout Jananajyothei Nagar, 1 st Cross Ullal MainRoad Bangalore – 560056 PAN NO :DRJPS2705B	Vs.	Income Tax Officer – Ward – 3(2)(3) Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri S.V. Ravi Shankar, Advocate
Department by	:	Shri Ganesh R. Ghale, Advocate –Standing Counsel for Revenue

Date of Hearing	:	19.06.2025
Date of Pronouncement	:	16.09.2025

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 29.08.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1068128115(1) passed u/s. 250 of the Income Tax Act, 1961 (in short “the Act”) for the assessment year 2012-13.

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

“1. The order passed by the authorities below in so far as it is against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstances of the case.

2. *The appellant denies himself to be assessed to a total income of Rs.19,11,500/-as against the returned income of Rs.2,91,500/- for the impugned assessment year 2017-18, on the facts and circumstances of the case.*

3. *The learned CIT(A) ought to have provided another opportunity of hearing in the interest of natural justice before dismissing the appeal, on the facts and circumstances of the case.*

4. *The learned CIT(A) has failed to issue notice to the mail id mentioned in the form 35, on the facts and circumstances of the case.*

5. *The learned CIT(A) has erred in dismissing the appeal on delay and has failed to appreciate that there existed sufficient cause for filing the appeal with delay, on the facts and circumstances of the case.*

6. *The appellant craves leave to add, alter, modify, delete or substitute any or all of the grounds and to file a paper book at the time of hearing the appeal.*

7. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

3. At the outset, the ld. A.R. of the assessee submitted that there is a delay of 132 days in filing the appeal before this Tribunal. Further, the ld. A.R. of the assessee also drew our attention on an application for condonation of delay filed along with an affidavit dated 19/06/2025 stating the cause for such delay, which are reproduced below for ease of reference and record:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "SMC" BENCH, BANGALORE

ITA No.519/Bang/2025

BETWEEN

Sasalu Nagaraju Satheesh, #51,Samskruthi Nilaya, Shivanandappa Layout, Jananajyothi Nagar 1 st cross ,Ullal Main Road, Bangalore -560056	Appellant
AND	
Income Tax Officer Ward 3(2) (3), Bangalore	Respondent

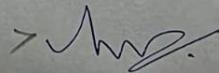
APPLICATION FOR CONDONATION OF DELAY FILED UNDER SECTION 5
OF THE LIMITATION ACT, 1963

The Appellant above named most respectfully submits as follows-

Brief History

1. The appellant, an individual filed the return of income for the assessment year 2012-13 on 22.07.2013 declaring taxable income of Rs.2,10,000/- under the head income from other sources.
 - (i.) The petitioner is an agriculturist and earns income from agriculture and has not filed his return of income on the premise that the only source of income is exempt from tax.
 - (ii.) The email id on the portal has been created for compliance purposes, by the tax practitioner and the appellant is unaware of the password, since he does not access the email or any electronic information and the PAN was obtained for opening a bank account.
 - (iii.) The return for the year was filed for the sole purpose of providing documentation to the bank authorities and no return of income has been filed thereafter, on a regular basis.

- (iv.) The appellant was unaware that the assessment was reopened and was unaware of the statutory notices issued, online and no notices were brought to the attention of the appellant.
- (v.) The appellant submits that the Assessment order was passed on 20/12/2019 and the appellant was unaware of the fact the assessment order was passed as the copy of assessment order was not served to the appellant.
- (vi.) The appellant has not ventured out due to the lockdown, commencing from 15/03/2020 and was intimated by the bank during April 2021, of the demands raised and sought to be recovered, upon which the appellant has realised that the order of assessment has been passed exparte and the appellant being aggrieved has sought professional advice and immediately thereafter filed an appeal before the Hon'ble CIT(A) on 26.05.2021.
- (vii.) The time limit for filing the appeal before the CIT(A), considering the date of the order as the date of the receipt, fell on 19/01/2020. Considering the fact that the whole nation was locked down, the appellant was prevented from venturing out and carrying on his daily activities, on account of the Corona Pandemic, the period from the commencement of the lockdown, was required to be excluded in computing the delay in filing the appeal.
- (viii.) In view of the above, the delay if restricted to 15/03/2020, the delay would be computed at 55 days. Alternatively, the delay if computed upto the date of filing the appeal on 26/05/2021, the delay is arrived at 493 days.
- (ix.) Alternatively, the appellant being an agriculturist, has not received the order of assessment and the date of being informed of the order passed, shall be construed to be the date of receipt of the order of assessment and in such a scenario, there was no delay in filing the appeal before the CIT(A).
- (x.) Further, the appeal has been filed within the date specified by the Apex court in 26/05/2021, which excluded the delay in filing an appeal due to the extraordinary circumstances.
- (xi.) The appellant was advised that there would be no delay due to the extraordinary circumstances and the reason for the delay has been stated that the order has not been served upon the appellant.



- (xii.) The appellant submits that the learned CIT(A) ought to have been benevolent and condoned the delay of 55 days delay and alternatively, the delay of 493 days, due to the fact that the order had not been served upon the appellant and adjudicated on the merits of the matter.
2. The delay caused was 55 days upto 15.03.2020. As per Supreme Court order the covid period exclusion ought to been considered for filing an appeal based on humanitarian grounds. Hence, the delay that has been caused ought to have been considered at 55 days and not 493 days.
 3. The appellant submits that he has realised that the communication was being sent by email and due to the fact that he does not check email, an alternative email has been filled in the Form 35 and the e- mail id which provided was, anubs22@gmail.com for better compliance.
 4. The appellant submits that the learned CIT(A) has issued three notices, of which the details are listed below and the print screen of the notices are enclosed for your reference and record.

Date	Notice	Email
09/11/2022	Enablement	anubs22@gmail.com hskumarca@gmail.com
22/03/2024	250	satheshsasalu@gmail.com
20/06/2024	250	satheshsasalu@gmail.com

5. The order by the CIT(A) has been passed on 29/08/2024, which was not in the knowledge of the appellant and no copies of the order have been served upon him by post. The appellant submits that the notices were served to satheshsasalu@gmail.com e-mail id was not in use by appellant. The appellant was unaware about the notices and the order passed u/s 250 on 28.08.2024.
6. The appellant was subsequently, informed on the demands outstanding by the office of the revenue, in the month of February 2025, while making recovery of the demand outstanding and the appellant realised that the email was again sent to the erroneous email and the order of the CIT(A) has also been passed exparte.

7. The appellant submits that upon receipt of the order, he has brought it to the attention of the Chartered Accountant regarding the dismissal and informed to undertake further course of action. The Chartered Accountant has availed the services of the present counsel and sent the orders and notices issued to the present counsel for preparation of the appeal, before this Honorable Tribunal.
8. The present counsel after examining the documents sought for records, prepared the appeal and accordingly the appeal came to be filed on 12.03.2025, though the due date was 28.10.2024 resulting in a delay of 132 days for the reasons mentioned above.
9. The appellant humbly prays that this Hon'ble Tribunal considering the peculiar facts of the present case take lenient and compassionate view and condone the delay in filing the present appeal against the order passed by the learned first appellate authority.
10. The appellant places reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT & Another Vs. ISRO Satellite Center, in ITA No. 532 of 2008 and other batch of appeal order dated 28/10/2011 has condoned the delay of 5 years in filing the appeal before the CIT[A], the relevant observation is at para 28 page 72 of the order.
11. The appellant places reliance on the decision of this Hon'ble Tribunal in the case of Smt. Shakuntala Hegde, Legal Heir of Mr. Ramakrishna Hegde Vs. ACIT, in ITA No. 2785/Bang/2004 order dated 25/04/2006 wherein the Hon'ble Tribunal has condoned the delay of 1,331 days i.e. 3 Years, 8 Months and 22 days in filing the appeal by the assessee.
12. The appellant places reliance on the decision of the Hon'ble High Court of Madras in the case of Commissioner of Income-tax Vs. K.S.P.Shanmugavel Nadar (1987) 30 Taxmann 133 (Madras).
13. The appellant places reliance on the decision of the Hon'ble Tribunal in the case of M/s. Midas Polymer Compounds Pvt Ltd Vs. ACIT in ITA No.288/Coch/2017 dated 25.06.2018.

14. The appellant places reliance on the decision of the Hon'ble High Court of Bombay in the case of Anatek Services Pvt Ltd Vs. Asst.Commissioner of Income-tax-10(1) in ITA No.102 of 2018 dated 11.02.2022.
15. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the Appellant would be put to great hardship and irreparable injury per contra no hardship or injury would be caused to the Respondent if this application of Condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST.Katiji and Others (1987) 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and Others 118 ITR 507. Further the Appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2000] 9 Supreme Court Cases 733 and Commissioner of Income-tax Vs. West Bengal Infrastructure Development Finance Corporation limited (2011) 334 ITR 269 (SC).
16. The appellant craves leave of this Hon'ble Tribunal to file additional submission at the time of hearing of this appeal.
17. The appellant prays that the delay in filing the appeal before the learned CIT(A) be condoned and the matter remitted to the file of the assessing officer for denovo proceedings.
18. It is also humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of 132 days in filing the present appeal against the order of the learned first appellate authority dated 19.07.2024 before this Hon'ble Tribunal and hear the same on merits for the advancement of substantial cause of justice.

Place: Bangalore
Date: 17.06.2025


Appellant

INDIA NON JUDICIAL

Government of Karnataka

Rs. 100

e-Stamp

Certificate No.	: IN-KA61011155414820X
Certificate Issued Date	: 17-Jun-2025 03:21 PM
Account Reference	: NONACC (FI)/ kacrsf08/ JAYANAGAR5/ KA-JY
Unique Doc. Reference	: SUBIN-KAKACRSFL0841938989401597X
Purchased by	: SATHEESH S N
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SATHEESH S N
Second Party	: NA
Stamp Duty Paid By	: SATHEESH S N
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

सत्यमेव जयते

Please write or type below this line

NOTARY
S.N. MADHVI
KATHRIEUPPE
BANGALORE URBAN
Reg. No. 1208
Expiry Date
19-09-2028
GOVERNMENT OF INDIA

[Signature]

Statutory Alert:

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2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "SMC" BENCH, BANGALORE

ITA No.519/Bang/2025

BETWEEN

Sasalu Nagaraju Satheesh, #51,Samskruthi Nilaya, Shivanandappa Layout, Jananajyothi Nagar 1 st cross ,Ullal Main Road, Bangalore -560056	Appellant
AND	
Income Tax Officer Ward 3(2) (3), Bangalore	Respondent

AFFIDAVIT:

I, Sasalu Nagaraju Satheesh, the appellant, S/o Dasappa Sasalu Nagaraju residing at #51, Samskruthi Nilaya, Shivanandappa Layout, Jananajyothi Nagar 1st cross, Ullal Main Road, Bangalore -560056 on this day as mentioned below, do hereby affirm under oath as follows:

1. I state that, I am the appellant in the present Appeal against order under section 250 of the Income Tax Act, 1961 and I am conversant with the facts of the present case. I am competent to swear to this affidavit.
2. I state that what is stated in Para 1 to 18 of the accompanying Condonation of Delay application are true and correct to the best of my knowledge, information and belief.
3. I state that what is stated in Para 1 to 2 of the present affidavit is true and correct to the best of my knowledge, information and belief.

Dated this 17th day of June, 2025 at Bangalore.

Identified by me



Notary Stamps not affixed
Due to non Availability
From 1-4-2003

SI.No...1190...Page...54...
Vol...02...Date...17/06/2025

Deponent

SWORN TO BEFORE ME

S.N.MADHU, B.A., LL.B.
Advocate & Notary Public
Government of India
#94/1-A, 2nd 'A' Cross, 3rd Phase,
6th Block, BSK 3rd Stage, Kathriguppe,
Near Ayyappa Temple, Bangalore - 560 085

4. On going through the above application for condonation, we find that the assessee filed the appeal with a delay of 132 days for the reason that the assessee, being an agriculturist, was unaware of the password of the email created by his tax practitioner. The assessee does not access the email or any electronic information &

therefore the assessee was completely unaware of the notices & order passed u/s 250 of the Act. The assessee was subsequently informed by the office of Revenue while making recovery of the demand. Thereafter, the assessee immediately informed the Chartered Accountant who had availed the services of the present counsel for preparation & filing of the appeal before the Tribunal. The Id. 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 Id. 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 this appeal 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 legalize 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, 132 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 132 days has to be condoned and accordingly we condone the delay and admit the appeal for adjudication.

7. Now the brief facts of the case are that the assessee filed his return of income for the AY 2013-14 on 07/03/2014, declaring a total income of Rs.2,91,500/-. As per the information available on record, the assessee had made cash deposits of Rs.16,20,000/- in State Bank of Mysore, which in the opinion of AO, prima facie indicates that the assessee had taxable income. Accordingly, notice u/s 148 of the Act was issued after recording the reason. As the assessee neither responded to notice issued u/s 148 of the Act nor u/s 142(1) of the Act as well as show cause notice dated 06/12/2019, the AO had no option but to complete the assessment to the best of his judgment ex-parte u/s 144 r.w.s. 147 of the Act and the entire cash deposits of Rs.16,20,000/- was added as unexplained money u/s 69A of the Act.

8. Aggrieved by the order passed by the AO u/s. 147 r.w.s. 144 of the Act dated 20.12.2019, the assessee preferred an appeal before the ld. CIT(A)/NFAC.

9. The ld. CIT(A)/NFAC dismissed the appeal of the assessee by not condoning the inordinate delay of 493 days for which in the opinion of the ld. CIT(A)/NFAC no cogent reason had been given. Therefore, the ld. CIT(A)/NFAC dismissed the appeal in limine in view of provision of section 249(3) of the Act.

10. Again, being aggrieved by the order of the 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 assessee is an agriculturist and he does not have access to the e-mail ID as he is not a tech savvy person. The ld. AR submitted that the ld.CIT(A)/NFAC failed to appreciate that there existed sufficient cause for filing the appeal belatedly before the ld.CIT(A)/NFAC. Further, the ld. A.R. of the assessee submitted that

as the assessee could not represent his case before both the authorities below and accordingly prayed that one more opportunity may be granted before the AO to represent his case in order to substantiate his claim.

12. The Id. D.R. on the other hand strongly opposed for remitting the matter back to the file of AO as the assessee is very callous in his approach in filing appeal not only before the Id.CIT(A)/NFAC but also before this Tribunal & prayed that the appeal of the assessee may be dismissed in limine.

13. We have heard the rival submissions and perused the materials available on record. The Id. CIT(A)/NFAC dismissed the appeal by not condoning the delay in filing the appeal. On going through the detailed affidavit filed before us, we take note of the fact that the assessee, being an agriculturist, was unaware of the password of the email created by his tax practitioner. The assessee does not access the email or any electronic information & therefore, the assessee was completely unaware of the notices & order passed by the AO u/s 147 r.w.s. 144 of the Act.

13.1 Perused the record and having heard learned counsel for the respective parties, it is perceived that the explanation offered in the condonation application as well as in affidavit is plausible and sufficient cause being shown by the assessee, which prevented him from filing the appeal within the specified period and accordingly we are inclined to condone the delay in filing the appeal before the Id. CIT(A)/NFAC.

13.2 Now it is an undisputed fact that assessee could not represent his case before the AO and accordingly the AO passed an ex-parte order u/s 144 of the Act and the entire cash deposit of

Rs.16,20,000/- was treated as unexplained money u/s 69A of the Act. It is also an undisputed fact that ld. CIT(A)/NFAC without condoning the delay of 493 days in filing the appeal before him, dismissed the appeal in limine in view of provisions contained u/s 249(3) of the Act. Before us, the ld. A.R. of the assessee vehemently submitted that while filing Form-35, the assessee categorically mentioned that the notices/communication may not be sent on the e-mail ID. This being so, in the interest of justice and fair play and as requested by the ld. A.R. of the assessee, we deem it fit and proper to remit the entire issue in dispute to the file of AO 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 documents/records/financials/reports/information to substantiate his claim. We make it clear that in case of further default, the assessee shall not be entitled to any leniency. It is ordered accordingly.

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

Order pronounced in the open court on 16th Sept, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated: 16th 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**