

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

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT

ITA No.1285/Bang/2025
Assessment year : 2017-18

Mr. Tirumaiah Sunil, 57, Koopa Gate, Nisarga Main Road, Jigani Hobli, Anekal Taluk, Bengaluru – 560 105. <b>PAN: GKDPS 5210M</b>	Vs.	The Income Tax Officer, Ward 4(2)(4), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep Chalapathy, CA
Respondent by	:	Shri Ganesh R. Ghale, Advocate, Standing Counsel.

Date of hearing	:	25.09.2025
Date of Pronouncement	:	22.10.2025

**ORDER**

1. This appeal is filed by Mr. Tirumaiah Sunil (the assessee/appellant) for the assessment year 2017-18 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 05.01.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 147 r.w.s. 144 of the Income-tax Act, 1961 [the Act] dated 21.09.2019 by the ITO, Ward 4(2)(4), Bangalore was dismissed. The dismissal was on account that assessee has not paid

the amount equal to the amount of advance tax payable by him if no return of income has been filed, invoking the provisions of section 249(4)(b) of the Act. The assessee is aggrieved with the same and is in appeal.

2. I find that assessee has filed the appeal late by 451 days. The due date for filing of appeal was 5.3.2024, but the same was filed on 30.5.2025. The assessee has filed application for condonation of delay. It was submitted that the appellate authority passed order on 5.1.2024. The assessee was not aware about such notice issued by the CIT(A) or the consequent order passed by him. The assessee later on consulting his CA, M/s. MSSV & Co., wherein assessee was intimated that there is already an appellate order passed and therefore appeal is required to be filed. Necessary affidavit with respect to the same was also filed by the assessee. The facts were also mentioned that appellant was not an income tax assessee and also not registered on IT portal. He did not have income prior to this year and therefore he was not aware about any income tax proceedings. Thus the appeal was delayed and requested for condonation. The Id. AR reiterated the same facts and stated that the delay in filing the appeal is for sufficient reason and may be condoned.
3. The Id. DR vehemently opposed the application for condonation of delay and relying upon the decision of Hon'ble Supreme court stating that if there is no sufficient cause, delay could not be condoned. He

further stated that in the present case, assessee has failed to show sufficient cause, therefore delay cannot be condoned.

4. I have carefully considered the rival contentions and perused the application for condonation of delay. I find that assessee is not a regular income tax return filer. He does not have any income prior to this year which is chargeable to tax and further he was not accustomed with the income tax proceedings. It is stated that he did not receive any income tax notices before the CIT(A) and further was not aware also about any appellate order passed by the Id. CIT(A). The date of communication of the order at sl.No.3(c) in Form 36 is shown to have been mentioned of the date of the order itself. Later on, when the pressure for demand recovery was made of Rs.10,22,000, he came to know and consulted a CA, who advised him to file the appeal. Immediately thereafter the assessee filed appeal before the Tribunal which has caused the delay. Ignorance of the law may not be an excuse but it is a sufficient cause for not doing something in time. In view of this, I condone the delay in filing of appeal and admit the same.
5. Merits of the case show that assessee is an individual, who did not file his return of income. But information was received that there was a cash deposit of Rs.13,23,500 in his bank account during the demonetisation period. Therefore notice u/s. 142(1) of the Act was issued on 9.3.2018 which was not responded to. The Id. AO collected information by issue of notice u/s. 133(6) of the Act to Karnataka Bank, Jigani Br., Bangalore. The Bank intimated that during the whole

year assessee has deposited cash of Rs.31,23,464 out of which sum of Rs.13,23,500 is deposited during the demonetisation period. The AO issued a show cause notice stating that cash deposit of Rs.13,25,500 is to be treated as undisclosed income u/s. 69A of the Act and further on cash deposited during the non-demonetization period, 8% of such deposit is to be considered as income. The assessee sought an adjournment, but did not furnish any information, therefore assessment order u/s. 144 was passed determining total income at Rs.14,67,500 on 21.9.2019.

6. The assessee filed appeal before the Id. CIT(A), who looked at col. 8 of Form 35 and held that assessee has not deposited any tax and therefore appeal of the assessee could not be admitted. The Id. CIT(A) issued notice of deficiency, but same was not replied to. Therefore appeal of the assessee was dismissed as not admitted by appellate order dated 5.1.2024.
7. The assessee is in appeal stating that the Id. CIT(A) is incorrect in holding that assessee has not deposited tax. It was submitted that as there was no income of the assessee, there cannot be any advance tax payable by the assessee.
8. The Id. DR vehemently supported the orders of the Id. lower authorities stating that assessee did not appear before the AO and therefore addition is made. Further as assessee has not deposited advance tax, therefore appeal is not admitted. There is no infirmity in the orders of the Id. lower authorities.

9. I have carefully considered the rival contentions and perused the orders of the ld. lower authorities. The ld. CIT(A) has not admitted the appeal of the assessee for the reason that according to him, assessee has not filed any return of income and therefore the assessee should have paid the amount equal to the amount of advance tax, which was payable by him. In this case, it is an admitted fact that assessee has not filed any return of income and it is the claim of the assessee that there is no income earned by the assessee for the year and therefore there is no advance tax payable by him and thus he is not hit by the provisions of section 249(4)(b) of the Act. The ld. CIT(A) has merely applied the provisions of the above section without showing that was there any advance tax payable by the assessee. If there is no advance tax payable by the assessee and no return of income is filed, assessee is not required to deposit any tax before his appeal is admitted as no tax is admitted by him. Therefore the order passed by the ld. CIT(A) dismissing the appeal of the assessee is not correct.
10. Even on the merits of the case, I find that the assessment order is passed u/s. 144 of the Act. The Finance (No.2) Act, 2024 w.e.f. 1.10.2024 has provided that where appeal is filed against an order on assessment made u/s. 144 of the Act, the ld. CIT(A) has power to set aside the assessment and refer the case back to the AO for making fresh assessment. Though the order passed by the ld. CIT(A) is dated 5.1.2024 i.e., prior to 1.10.2024, however, the principle enunciated is that if the order is passed without hearing the assessee, the assessee if in appeal against such an order, may be granted an opportunity to

represent his case before the AO for determination of his correct income. In this case naturally the order is passed u/s. 144 of the Act and assessee has not been heard. In view of this, the appeal of the assessee is restored back to the file of the Id. AO and assessee is directed to produce the relevant details about the cash transactions noted by the AO. The AO may examine the same and decide the issue afresh after giving opportunity of hearing to the assessee.

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

Pronounced in the open court on this 22<sup>nd</sup> day of October, 2025.

( PRASHANT MAHARISHI )  
VICE PRESIDENT

Bangalore,

Dated, the 22<sup>nd</sup> October, 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.