

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

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

ITA No.1045/Bang/2025
Assessment Year: 2012-13

Kowlanahalli Ningegowda Somashekar C/o V Sudhindranath No.51/7/1, Chitrakoot Ratna Avenue Richmond Road Bangalore 560 025 PAN NO : APFPS9968D	Vs.	ITO Ward 5(2)(3) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Ms. Pooja Maru, A.R.
Respondent by	:	Sri Balusamy N., D.R.

Date of Hearing	:	20.11.2025
Date of Pronouncement	:	13.02.2026

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. CIT(A)/NFAC dated 31/01/2024 vide DIN and Order No: ITBA/NFAC/S/250/2023-24/1060311062(1) passed u/s. 250 of the income Tax Act, 1961 (in short “the act”) for the AY 2012-13.

2. The assessee has raised the following Grounds of appeal: -

1. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts, acting prejudicially to the appellant's interest. The order is bad in law, erroneous, and contrary to the facts and circumstances of the case, on the following grounds:

- a) Lack of Jurisdiction.
- b) Erroneous assumption of jurisdiction.
- c) Erroneous passing of an ex parte order under Sections 144.
- d) Failure to comply with the principles of natural justice.

2. The learned Commissioner of Income Tax Appeals, order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have nor been complied with and consequently, the re-assessment requires to be cancelled.

3. The learned Commissioner of Income Tax Appeals, has erred in passing the impugned assessment order is bad in law and void ab-initio in as much as the order has been passed in gross violation of the principles of natural justice as the appellant has neither been served the notice u/s. 148 of the Act nor the letter dated 24/10/2019 referred to by the learned A.O. in the impugned order and therefore, the impugned order passed deserves to be annulled.

4. The learned Commissioner of Income Tax Appeals, has erred in making an addition of Rs. 91,50,000/- as unexplained money u/s 69A of the Act without appreciating that the aforesaid sum received by the appellant was a mere re-payment of the deposit given by the appellant earlier and the same does not constitute income under the facts and in the circumstances of the appellant's case.

5. The learned Commissioner of Income Tax Appeals erred in 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.

3. At the outset, the Id. A.R. of the assessee submitted that there is a delay of 400 days in filing the appeal before this Tribunal. The Id. A.R. of the assessee also drew our attention on application for condonation of delay dated 2.5.2025 along with an affidavit in original and medical certificate which are reproduced below for ease of reference and record:


INDIA NON JUDICIAL
Government of Karnataka
Rs. 100
e-Stamp

Certificate No.	: IN-KA20185181717454X
Certificate Issued Date	: 01-May-2025 03:22 PM
Account Reference	: NONACC (FI)/ kaksfcl08/ HALASURU/ KA-SV
Unique Doc. Reference	: SUBIN-KAKAKSFCL0864639033264820X
Purchased by	: KOWLANAHALLI NINGEGOWDA SOMASHEKAR
Description of Document	: Article 4 Affidavit
Property Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: KOWLANAHALLI NINGEGOWDA SOMASHEKAR
Second Party	: INCOME TAX APPELLATE TRIBUNAL
Stamp Duty Paid By	: KOWLANAHALLI NINGEGOWDA SOMASHEKAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

Please write or type below this line

AFFIDAVIT

I, **KOWLANAHALLI NINGEGOWDA SOMASHEKAR**, s/o **NINGEGOWDA** having PAN: **APFPS9968D** and having registered Address at No.93, Flat No.5, 2nd Floor, West Gate Manor, R.V.Road, Basavanagudi, Basavanagudi Bangalore 560004.

K.N. Somashekar

Statutory Alert:
1. The authenticity of this Stamp Certificate should be verified at 'www.shclstamp.com' or using e-Stamp Mobile App of Stock Holding
2. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
3. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

Date: 02/05/2025

To

**The Honorable,
Income Tax Appellate Tribunal
Bangalore, Karnataka**

Dear Sir,

Sub: Petition for condonation of delay in filing of Income Tax Appeal for the A.Y. 2012-13 in the file of Mr. KOWLANAHALLI NINGEGOWDA SOMASHEKAR. PAN: APFPS9968D

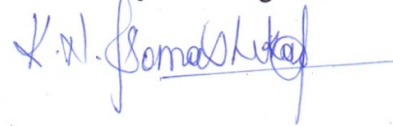
Reference is invited to the above appeal filed in respect of which we would like to submit Petition for condonation of delay in filing the appeal of **Mr. KOWLANAHALLI NINGEGOWDA SOMASHEKAR. PAN: APFPS9968D** before the Honorable Income Tax Appellate Tribunal.

An Order U/s **250 of the Income-tax Act, 1961** was passed on your Appellant by the National Faceless Appeal Center (NAFC) on 31/01/2024. You Appellant, not being aware of the notices being sent by the National Faceless Appeal Center (NAFC) could not represent his case.

Your appellant had undergone medical surgery and was advised to have complete rest. Your appellant was not regularly checking the mails sent to him as he abstained from all business activities.

Now that your Appellant had found that there is an order passed, after receiving a call from the Income tax department, have preferred an appeal before the Honorable Income Tax Appellate Tribunal.

At this juncture, it is humbly prayed that based upon the totality of the circumstances mentioned above this Honorable Income Tax Appellate Tribunal may be pleased to consider the prayer of the complainants in granting the condonation for delay in filing and



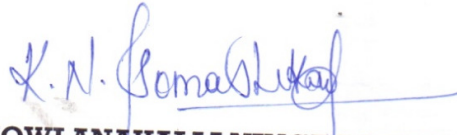
appearing before this Honorable Income Tax Appellate Tribunal in the principle of natural justice.

It is humbly submitted that this Honorable Income Tax Appellate Tribunal on scrutinizing facts and circumstances in the accompanying application, order dated 31.01.2024 where gross delay of 461 days at present dated 05.05.2025, deserves to be condoned in the overall interest of justice. On the other hand if condoning the delay being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for the complainants.

On the other hand if condoning the delay being denied it would seriously undermine the cause of justice, resulting into miscarriage of justice for your Appellants.

Thanking you,

Yours faithfully,



KOWLANAHALLI NINGEGOWDA SOMASHEKAR

20th Nov 2025

To,
**The Hon'ble Income Tax Appellate Tribunal
Bangalore Bench- A,
Karnataka.**

Respected Sirs,

**Sub: Submission of medical records in respect of the Condonation of delay
petition filed in the file of Sri.Kowlanahalli Ningegowda Somashekar
(PAN: APFPS9968D) for AY 2012-13.**

Ref: Appeal No. ITA 1045/BANG/2025

We refer the above-mentioned appeal and respectfully submit the following for your kind consideration:

Your appellant filed an appeal before the Hon'ble tribunal with submission of Form 36 on 05.05.2025. The appeal was filed against An Order U/s 250 of the Income-tax Act, 1961 passed by the National Faceless Appeal Center (NAFC) on 31.01.2024. The filing of the appeal was delayed by 461 days as at 05.05.2025.

In this regard, your appellant has already filed a detailed petition for condonation of delay, explaining the reasons for the said delay. It is submitted that due to serious medical circumstances, your appellant was unable to participate in the online proceedings under the Faceless Appeal Scheme and was consequently unaware of the conclusion of the appellate proceedings and the passing of the appellate order.

Enclosed herewith are copies of the relevant medical records in support of the above.

In light of the foregoing, it is most humbly prayed that, considering the totality of the circumstances set out in the condonation petition, this Hon'ble Tribunal may be pleased to condone the delay in filing the appeal, in the interest of natural justice.



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LTA & Co.
Chartered Accountants




We hope your good self finds the above submission in order and the assessee shall be pleased to furnish any additional information required in this regard. We most humbly request your good office to grant us sufficient opportunity of being heard before disposal of this application.

Kindly acknowledge the receipt of this and do the needful.

Thanking you,
Yours faithfully,

For LTA & Co,
Chartered Accountants


CA Pooja Maru
Partner.

(Enclosed : As above)

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TO WHOMSOEVER IT MAY CONCERN

Date:4/4/2025

Patient by name Mr. K.N.SOMASHEKAR aged 53 year male patient had bilateral humerus fracture on May- 2012.operated for same with implant, it was crush injury, which led to decreased power and range movement of both upper limb, requiring regular physiotherapy and analgesic.

Concurrently patient having bilateral Renal stones, having recurrent pain abdomen ,on supportive care with current situation, patient advised to avoid stresses physical activity and frequent travel

Dr.Prashanth.M

SVK HOSPITALL

1, Vasanthapura Main Road,
Subramanyapura Post,
Konanakunte Cross, Bengaluru-560 068
9964071373, 080 29902212, 9731755836

SVK HOSPITALL

Trusted Care At Your Critical Period

#1, Konankunte Cross, Vasanthapura Main Road, Subramanyapura Post,
Near Manasa Theatre, Bengaluru - 560 068. Ph.: 84316 66041 / 97317 55836

4. On going through the application for condonation, we find that the assessee could not file the appeal in time for the reason that the assessee had undergone medical surgery and was advised for complete bedrest. The assessee was not regularly checking the mails sent to him as he abstained from all business activities. However, after noticing that an order was passed after receiving a call from the department, he preferred an appeal before this Tribunal with a delay of 400 days. The assessee was completely unaware of the order passed by the Id. CIT(A) due to his medical condition. 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 and submitted that the assessee had neither appeared before the AO nor before the Id. CIT(A) which clearly demonstrate the careless attitude of the assessee.

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 appeals 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. We have gone through the reasons explained by the assessee in which the assessee claimed that he was completely unaware of the order passed by the Id.CIT(A). It is only after receiving a call from the department, the assessee

came to know that the order has already been passed by the Id. CIT(A) and thereafter he approached the present counsel to take necessary action.

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, 400 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 400 days has to be condoned and accordingly we condone the delay and admit the appeal for adjudication.

7. Before us, the assessee has also filed an application for admission of additional evidences, which are reproduced below:

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Chartered Accountants



20th Nov 2025


To,
The Assistant Registrar
Income Tax Appellate Tribunal - Bench A
Bangalore, Karnataka

Dear Sir/ Madam,

Sub: Filing of Additional Evidence

Ref: In the case of Sri.Kowlanahalli Ningegowda Somashekar (PAN: APFPS9968D) for AY 2012-13 - Appeal No. ITA 1045/BANG/2025.

1. With reference to the above, we wish to inform you that the above appeal arises out of order dated 31.01.2024 passed by the Learned Commissioner of Income Tax Appeals - NFAC New Delhi.
2. The order passed by the learned Commissioner of Income Tax Appeals & Learned Assessing officer are both ex-parte orders. Owing to medical grounds your appellant was unable to participate in appeal proceedings. Further all notices were issues electronically to your appellant, leaving him unaware of the appeal proceedings. Only after receiving a call from income tax office regarding the outstanding demand your appellant became aware of the said proceedings.
3. The addition of amount deposited in the bank account to the total income of the appellant is made erroneously by the learned assessing officer and confirmed by the learned Commissioner of Income Tax Appeals.
4. The appellant understands that this Hon'ble Income Tax Appellate Tribunal can also be a fact-finding authority and it would be in the interest of substantial justice that the copy of the quarrying license, Hon'ble Karnataka High court in your appellant's writ petition, copy of the bank statement extract, copy of the letters filed and received by your appellant from Govt of Karnataka Department of Mines and Geology and State Human Rights Commission , copy of confirmation letters; filed by the appellant now as Annexures 1-5, be admitted as additional evidence and adjudicated upon.



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51/7/1, "Chitrakoot", Ratna Avenue, Richmond Road, Bengaluru - 560 025
Tel : 080 - 4113 8389 / 2558 2365 E-mail : onlinelta@gmail.com

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5. These documents could not be submitted during the assessment and first appeal proceedings owing to reasons detailed in Para 2. Hence, we pray to your good self to admit these documents as additional evidence and adjudicated upon.
6. The Additional Evidence filed goes to the very root of the issue under appeal and hence is very important.
7. Hence the appellant prays that in the interest of substantial justice, the additional evidence filed by the appellant be kindly admitted and adjudicated upon.

Attached with this letter is Application seeking admission of Additional Evidence under rule 29 of Income Tax Appellate Tribunal Rules, 1963.

We request the Honorable Appellate Authority to kindly accept the above additional evidence in the interest of natural justice.

Thanking you,
Yours faithfully

For Sri.Kowlanahalli Ningegowda Somashekar,

Authorized Representative

Encl: As above.

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**BEFORE THE HONOURABLE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE, KARNATAKA.**

ITA 1045/BANG/2025

**In the Case of Sri.Kowlanahalli Ningegowda Somashekar (PAN: APFPS9968D)
(Appellant)**

AY 2012-13

**APPLICATION SEEKING ADMISSION OF ADDITIONAL EVIDENCE UNDER
RULE 29 OF INCOME TAX APPELLATE TRIBUNAL RULES, 1963.**

1. The present appeal before The Honourable Income Tax Appellate Tribunal, Bangalore, Karnataka i.e. ITA NO: ITA 1045/BANG/2025 is against order dated 31.01.2024 passed by Learned Commissioner of Income Tax Appeals - NFAC New Delhi.
2. The issue in the said appeal pertains to the erroneous addition of amount deposited in your appellant's bank account. In support of your Appellant's Claim, we are filing the following Additional Evidence in duplicate.

Sl.No.	Particulars	Reference
1	Copy of the quarrying license.	Annexure - 1
2	Copy of the order of Hon'ble Karnataka High court in your appellant's WP case matter (WP13374/2011(GM-MM-S)).	Annexure - 2
3	Copy of the bank statement extract.	Annexure - 3
4	Copy of the letters filed and received by your appellant from Govt of Karnatak Department of Mines and	Annexure - 4



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	Geology and State Human Rights Commission.	
5	Copy of confirmation letters.	Annexure - 5

3. Your appellant understands that this Hon'ble Income Tax Appellate Tribunal can also be a fact-finding authority and it would be in the interest of substantial justice that the above documents be admitted as additional evidence and be adjudicated upon.
4. The Additional Evidence filed goes to the very root of the issue under appeal and hence is very important.
5. Hence, the appellant prays that in the interest of substantial justice, the additional evidence filed by the appellant be kindly admitted and adjudicated upon.

Date: 20.11.2025

For Sri.Kowlanahalli Ningegowda Somashekar,



Authorized Representative.

7.1 The ld. A.R. submitted that the order passed by the ld. CIT(A)/NFAC as well as AO are ex-parte orders. Owing to medical grounds, the assessee was unable to participate in the appellate proceedings. Further, all the notices were sent electronically to the assessee leaving him unaware of the appeal proceedings. It is only after receiving a call from the income tax office regarding outstanding demand, the assessee became aware of the said proceedings. Further, the ld. A.R. of the assessee submitted that this Tribunal being highest fact-finding authority may consider the additional evidences produced and adjudicate upon the same by admitting the same since these evidences goes to the very root of the issue under appeal and hence it is very important. On the other hand, no loss or hardship will be caused to the respondent, if this application is allowed.

8. The ld. D.R. on the other hand strongly opposed the admission of the additional evidences at this stage.

9. We have heard the rival submissions on the admission of additional evidences. According to Rule 29 of the I.T. Rules, 1963, generally the parties to the appeal shall not be entitled to produce additional evidences either oral or documentary before the Tribunal but if the Tribunal requires any document to be produced to enable it to pass orders or for any other substantial cause or if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal for reasons to be recorded, may allow such documents to be produced or may allow such evidences to be adduced. In the present case, it is undisputed fact that the assessee could neither represent his case before the AO nor could produce any documents/records/statements to refute the allegation. The AO passed an ex-parte order u/s 144

r.w.s. 147 of the Act based on the material available on record by holding that assessee is the owner of the cash in the bank account and the assessee has not given any satisfactory reply regarding source of funds. Further, before us, the ld. A.R. of the assessee vehemently submitted that the assessee could not represent his case before the ld. CIT(A) because of the medical grounds. This being so, we find good and sufficient reason in not submitting these additional evidences before the lower authorities. Accordingly, we admit these additional evidences as these are essential for adjudication of the issue in the present appeal. After admitting the same, in our opinion, these additional evidences are filed for the first time before the Tribunal and the ld. AO as well as ld. CIT(A)/NFAC have no occasioned to examine these additional evidences. This being so, in the interest of justice and fair play and as requested by the ld. A.R. of the assessee, we remit the entire issue in dispute to the file of AO for deciding afresh after taking into consideration the additional evidences produced before us and decide the same 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 further documents/submissions as may be required by the AO for completion of the assessment. It is ordered accordingly.

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

Order pronounced in the open court on 13th Feb, 2026

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 13th Feb, 2026.
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.**