

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1111/Bang/2019</b>
<b>Assessment Year : 2010-11</b>

M/s. Bangalore Metro Rail Corporation Ltd., 3 <sup>rd</sup> Floor, BMTC Complex, K H Road, Shanti Nagar, Bangalore - 560 027. PAN: AAACB4881D	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle - 1 [1][2], Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sreehari Kutsa, Advocate
Revenue by	:	Shri Sumer Singh Meena, CIT DR

Date of Hearing	:	25-04-2022
Date of Pronouncement	:	29-04-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 26/02/2019 passed by the Ld. CIT(A)-1, Bangalore for assessment year 2010-11 on following grounds of appeal:

*"1. The Order of the learned Commissioner of Income-tax (Appeals), passed under section 250 of the Act in so far as it is against the Appellant is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*

*2. The learned CIT(A) is not justified in refusing to admit the appeal of the Appellant on the grounds that delay in filing of the appeal cannot be condoned on the facts and circumstances of the case.*

3. *The learned CIT(A) is not justified in dismissing the appeal despite the fact that the merits of the matter were covered by the decision of the jurisdictional Tribunal in the Appellant's own case vide Order dated 31/10/2014 in ITA No. 1070 & 1071/Bengaluru/2014 on the facts and circumstances of the case.*

4. *The learned CIT(A) ought to have held that the Appellant is an executing agency of the Government of India and the Government of Karnataka and hence is not liable to be taxed under the Income Tax Act, 1961 on the facts and circumstances of the case.*

5. *The learned CIT(A) ought to have held that the interest earned on deposits is inextricably and intrinsically connected with the business of the Appellant Company and further without prejudice the same is earned during the preoperative period and consequently the learned Assessing Officer is not justified in law in denying the claim of the Appellant to treat the interest income of Rs.18,25,27,519/- as exempt from tax on the facts and circumstances of the case*

6. *The learned CIT(A) ought to have held that the other interest income of Rs.4,86,22,824/- is not taxable on the facts and circumstances of the case.*

7. *The learned CIT(A) ought to have held that the learned AO erred in law in bringing the tender fees received of Rs.1,67,00,413/- to tax, as the same were received in pursuance to the construction of capital assets and constitute capital receipt and therefore not taxable on the facts and circumstances of the case.*

8. *The learned CIT(A) ought to have held that the learned AO erred in law in bringing to tax other miscellaneous receipts of Rs.4,03,48,513/- to tax as the same were received in pursuance to the construction of capital assets and constitute capital receipt and therefore not taxable on the facts and circumstances of the case.*

9. *Without prejudice to the right to seek waiver with the Hon'ble Chief Commissioner of Income Tax/Director General of Income Tax the Appellant Company denies itself liable to be charged to interest under section 234B and section 234D of the Act which under the facts and circumstances of the case deserves to be cancelled. The*

*calculation of interest under section 234B and section 234D is not in accordance with law as the rate, amount and method for calculating interest is not discernible from the order of assessment.*

*10. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

*11. 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."*

## **2. Brief facts of the case are as under:**

2.1 It was submitted that assessee is a corporation under the special purpose vehicle to implement metro rail projects. It is submitted that the assessee took requisite permission and approvals to invest the surplus funds. The funds were invested in fixed deposits of bank that earned interest until, they were required for implementation of the project. The assessee is said to be a wholly owned company of Govt. of Karnataka, wherein the Govt. of India contributed in the form of equity and subordinate debt to the extent of 25% of the project cost. The design and technology for the project was as per the assessee's project report approved by the Govt. of Karnataka.

2.2 During the year under consideration, the Ld.AO made following additions.

<b><i>Particulars of addition</i></b>	<b><i>Amount (Rs.)</i></b>
<i>Interest on term deposit</i>	<i>18,25,27,519</i>
<i>Interest – others</i>	<i>4,86,22,824</i>
<i>Miscellaneous receipts</i>	<i>5,70,48,925</i>
<b><i>Total</i></b>	<b><i>28,81,99,268</i></b>

2.3 The Ld.AR submitted that the assessee approached a professional who advised that, no relief may be expected in the

appellate forum, and therefore, the assessee did not file any appeal before the Ld.CIT(A). Subsequently, in assessee's own case for A.Ys. 2007-08 and 2008-09, that was pending before this Tribunal in ITA Nos. 1070 & 1071/Bang/2011, was decided on 31.10.2014, wherein the issue under consideration in respect of income earned on investment made out of surplus funds, whether taxable in the hands of the assessee or not was decided. This Tribunal held in favour of the assessee on the issue and the Ld.Counsel who represented the assessee before this Tribunal advised the assessee to challenge the orders that were not challenged. Accordingly, assessee preferred appeal before the Ld.CIT(A).

3. The Ld.AR submitted that, though several grounds were raised before the Ld.CIT(A) on merits, the Ld.CIT(A) dismissed the appeal for not condoning the delay in filing of appeal of 1037 days before him. The Ld.CIT(A) observed as under:

*"2.0. At the outset it is seen that there has been a delay of 1037 days in filing of this appeal. During the course of hearing, when enquired about the reason for such a great delay, the Assessee stated that delay was for the reason that the Appellant had filed appeals against order for the A.Y. 2007-08 and 2008-09 before the CIT(A) who dismissed the appeal and the appeals were filed before the ITAT, Bengaluru. Thereafter during the pendency of the said appeals before the Tribunal, assessment order came to be passed for the A.Y. 2009-10, which was challenged before the CIT(A) who dismissed the appeal. That subsequently thereafter assessment order came, to be passed for the A.Y. 2010-11, and no appeal was filed against it, and thus further appeals were not filed for the A.Y. 2009-10 & 2010-11 as it was not clear as to what action was to be taken as the Appellant being a government company with stakeholders being State Government and Central Government (50:50), due to change in appointees in the Board, the decision was kept pending. That thereafter when seeking advice from its*

*counsel for some other matter, when it was enquired as to what was the status of the matters for the A.Y. 2010-11, it was stated that no appeals have been filed as no decision could be taken on the same. After the counsel advised them to forthwith file the appeals, the present appeal was filed, along with the appeal for the A.Y. 2009-10 before the ITAT, Bengaluru. The Appellant has placed reliance on the decision of the Karnataka High Court in Karnataka Forest Development Corporation Limited v. AC/Tin ITA No. 83/2009 and several other decisions in support of its plea.*

*2.1 I have carefully considered the submission of the Appellant and I am of the opinion that the reasons given by the Appellant do not constitute sufficient cause necessary to condone such a great delay of 1037 days. The appellant ought to have contested the order of the AO, as it has done for the preceding assessment years. There is no reason as to why the appellant who has agitated by filing the appeals against the similar treatment given by the AO in the previous years, has chosen to sleep over and not to react under the similar circumstances. It could be due to negligence on the part of the appellant.*

*2.2 In view of the above, the appeal is not admitted on account of the delay in filing of the appeal and the delay is not condoned.”*

- 4.** Aggrieved by the order of Ld.CIT(A), assessee is in appeal before this *Tribunal*.
- 5.** The Ld.AR submitted that, it is only after the order passed by this *Tribunal* dated 31.10.2014 that assessee preferred appeal, with the correct advice of the professional before the Ld.CIT(A). On identical facts during the relevant period for A.Y. 2009-10, there was a delay in filing the appeal before this *Tribunal* to the extent of 1240 days which was condoned by this *Tribunal*. The Ld.DR opposed the prayer of the assessee for condoning the delay in filing the appeal.
- 6.** On the contrary, the Ld.CIT.DR submitted that there is no decision on the issue, on the additions by Ld.CIT(A), in the event

the delay is condoned. Revenue may be granted an opportunity to pass an order on merits.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that Ld.CIT(A) dismissed the appeal *in limine* due to the delay caused in filing the appeal before him. The affidavit that was filed by the assessee before the Ld.CIT(A) reveals that, assessee was subjected to wrong professional advice on the issues that, no relief could be expected, and therefore, no appeal was preferred. On identical circumstances, this *Tribunal* considered a delay of 1240 days in assessee's own case for A.Y. 2009-10.

8. We note that the period during which the appeals for year under consideration before the Ld.CIT(A) and appeal for immediately preceding Assessment Year (2009-10) before this *Tribunal* was same and the reasons mentioned in the affidavit for not filing the appeal before the respective authorities within the period of limitations are identical. This *Tribunal* under such circumstances, observed and held as under:

*"11. As far as the application for condoning delay in filing this appeal is concerned, it has been submitted in an affidavit in support of the application for condonation of delay that the assessee was subjected to wrong professional advice on the matter that no relief may be expected in the appellate forum and therefore no appeal may be preferred, and the disputed taxes may be remitted. The assessee followed the professional advice. The order of the CIT(A) for the preceding A.Ys.2007-08 & 2008-09 were challenged before this Hon'ble Tribunal. The Hon'ble 'A' Bench of this Tribunal vide its order in ITA No. 1070 & 1071/Bang/2011 dated 31/10/2014 held that income earned on investments made out of surplus funds are not taxable in the case of the assessee. When the then Counsel advised the assessee that in the light of the*

*Tribunal's order in the assessee's favour, it must file the statutory appeals for the orders which were not challenged, the assessee immediately took every step to ensure that this appeal is filed at the earliest. It is also stated that no appeal was filed earlier on account of professional advise. Accordingly the assessee has preferred appeal against the order of the CIT(A) before this Tribunal.*

*12. It has also been submitted that it is only because of the wrong professional advice that there arose a delay in filing of this appeal. The assessee is a government company and as a matter of established practice, went by the advice of the professional. It was submitted that if the delay is not condoned, great injury would be inflicted, given that the subject matter of the appeal is covered in favour of the assessee and the amount involved in the appeal is very huge. This tribunal has already held that the amount in dispute is not exigible to Income Tax, and therefore if this appeal is dismissed on the technical ground of delay in filing, it would amount to taxes being collected on amounts that do not constitute income under section 4 of the Act, which is not the intention of the legislature. Dismissing this appeal on account of delay, would deprive the justice by not giving the assessee the refund that it deserves and therefore it was pleaded that the Tribunal may take a lenient view and condone the delay. It was further submitted that the assessee is a government company and the decision making body is the board consisting of the representatives of both the Government of India and the Government of Karnataka and due to frequent restructuring of the Board, delays take place in decision making as regards to tax and financial matters.*

*13. Reliance was placed on the decision of the Hon'ble jurisdictional High Court in the matter of Karnataka Forest Development Corporation Limited v. ACIT in ITA No. 83/2009 where the Hon'ble Court held :*

*No doubt, it is the law that every days delay has to be explained, but, at the same time, where, Government is the appellant, having regard to the way that the Government and its officers function, the Courts have been taking lenient view in condoning the delay in the appeals filed by them. In the instant case, it is not disputed after the order came to be passed, the Managing Director was changed and thereafter, the Chartered Accountant took a decision to prefer the*

*appeal and though papers were sent for signature was not signed and appeal was not filed. What is to be seen in such matters is that, the appellant was negligent and by not filing the appeal within time, whether there is any valuable right of the appellant, which would be taken away by not condoning the delay in the matters arising under the Income-tax Act, ultimately the question is, what is the tax payable under law. It is not an adversary litigation. An assessee cannot be charged without statutory authority.*

*[emphasis supplied]*

*14. Reliance was also placed on the following decisions wherein it has been held that for the purpose of condoning the delay in filing of appeal, the appellate authority/court have to take a lenient view and dispose-off the matter based on the merits of the matter and not on the basis of technicalities.*

*(i) Collector, Land Acquisition vs. MST. Katiji and Others (1987) 167 ITR 471 (SC);*

*(ii) Concord of India Insurance Co. Ltd., vs. Smt. Nirmala Devi and Others 118 ITR 507 (SC);*

*(iii) Radha Krishna Rai vs. Allahabad Bank & Others [2009] 9 SCC 733;*

*(iv) CIT vs. West Bengal Infrastructure Development Finance Corporation Limited [2011] 334 ITR 269 (SC);*

*(v) Improvement Trust, Ludhiana v. Ujagar Singh & Ors. in Civil Appeal No. 2395 of 2008 (SC);*

*(vi) Ram Nath Sao v. Gobardhan Sao reported in AIR 2002 SC 1201;*

*The assessee further relied on the decision of this Tribunal in the case of M/s. Raghavendra Constructions v. ITO in ITA No. 425/Bang/2012 wherein this Tribunal has, having regard to the facts of the matter, condoned the delay of 678 days. The Tribunal relied on the decision of the this Tribunal in the case of Shakuntala Hegde, L/R of R. K. Hegde v. ACIT in ITA No. 2785/Bang/2004 wherein the reason that appeal was filed after a delay of 1331 days in filing of appeal pursuant to advice given by new counsel was accepted as sufficient cause and the delay condoned. Similarly for identical reason, the Hon'ble jurisdictional High Court condoned a delay of five years in filing of appeal in the case of CIT v. ISRO Satellite Centre in ITA No. 532/2008, and this Tribunal in the case of M/s Raghavendra Constructions supra relied on this decision also, while condoning the delay.*

15. The learned DR opposed the prayer of the assessee for condoning the delay in filing the appeal. He pointed out that the order of the Tribunal for Assessment Year 2007-08 and 2008-09 was passed on 31.10.2014 but the appeal was filed only on 06.10.2015. Even going by the reason that the reason for not filing the appeal within time was advise by professional not to file appeal against the order of the CIT(A) for Assessment Year 2009-10, that advise would not hold good after 31.10.2014.

16. The learned Counsel for assessee pointed out that all Metro Rail Corporations which come under the Ministry of Urban Development made representation to the Ministry of Urban Development to seek exemption of interest income and miscellaneous income generated during project implementation. The Secretary to Govt. of India, Ministry of Urban Development wrote a letter dated 23.01.2013 to the Secretary (Revenue), Ministry of Finance. Based on that the assessee also informed to AO by letter dated 15.04.2013, 13.05.2013 and 04.06.2013 regarding the pendency of request for exemption. He further pointed out that as against the order dated 31.10.2014 of the Tribunal for Assessment Year 2007-08 and 200809, the Revenue preferred appeal before Hon'ble Karnataka High Court in ITA Nos.117 and 118 of 2015 and the Hon'ble Karnataka High Court by its judgment dated 23.11.2021 affirmed the order of the Tribunal. It was submitted that the pendency of appeals by the Revenue against Tribunal order dated 31.10.2014 was another reason why the assessee was in a dilemma whether to file appeal before Tribunal for Assessment Year 200910 and it was only on subsequent concrete advise of the Counsel that a firm decision was taken to file appeal for Assessment Year 2009-10 before the Tribunal.

17. We have carefully considered the rival submission. At the outset, we observe that the Hon'ble Supreme Court, in the case of Mst. Katiji (supra), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of Shakuntala Hegde, L/R of R.K.

*Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Hon'ble Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011 has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal.*

*18. Keeping in mind the aforesaid principles, we shall consider the claim of the assessee in the present case. Admittedly the advice was given by the counsel who appeared on behalf of the assessee before the Tribunal for Assessment Years 2007-08 and 2008-09. The decision of the Tribunal was rendered on 31.10.2014. The appeal was filed by the Revenue before Hon'ble High Court in the year 2015 against the order of Tribunal dated 31.10.2014. A final call could be taken only later based on the professional advise of the later Counsel. Moreover, the assessee has also been pursuing claim for exemption of income during construction period from the Government. Hence, we find that there has been no willful neglect on the part of the assessee. In such matters the advice of the professional would be the point of time at which the assessee would begin to explore the option of exhausting all legal remedies. We are also of the view that by condonation of delay there is no loss to the revenue as legitimate taxes payable in accordance with law alone would be collected. We therefore accept the reason given for condonation of delay in filing the appeal. The delay in filing the appeal is accordingly condoned."*

**9.** From the above, it is clear that the period of time that assessee followed the wrong professional advice in preferring the respective appeals are the same. It is also true that the advice of the professional would be the point of time at which the assessee would begin to explore the option of exhausting all legal remedies.

**10.** Therefore respectfully following the view adopted by this *Tribunal* in assessee's own case for A.Y. 2009-10, we accept the reasons given for the delay and thereby condone the same for not able to file an appeal before the Ld.CIT(A). As the Ld.CIT(A) has not decided the issues on merits, we remand this appeal back to Ld.CIT(A) to pass a detailed order on the merits of the case by granting proper opportunity of being heard to assessee in accordance with law.

**Accordingly, the grounds raised by assessee stands allowed for statistical purposes.**

**In the result, the appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in open court on 29<sup>th</sup> April, 2022.

Sd/-  
(B.R. BASKARAN)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 29<sup>th</sup> April, 2022.

**Copy to:**

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|---------------|------------------------|
| 1. Appellant  | 4. CIT(A)              |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT        | 6. Guard file          |

By order

Assistant Registrar,  
ITAT, Bangalore