

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 693 &amp; 694/Bang/2023</b>
<b>Assessment Years : 2014-15 &amp; 2015-16</b>

M/s. UBMC Trust Association, U.B.M.C Trust Association of South Kanara & Coorg, Udupi, Karnataka – 576 101. <b>PAN: AAATU1814G</b>	<b>Vs.</b>	The Income Tax Officer, Exemptions Ward – 1, Mangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravi Shankar .S.V, Advocate
Revenue by	:	Dr. Nischal .B Addl. CIT (DR)

Date of Hearing	:	24-01-2024
Date of Pronouncement	:	08-04-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals arise out of separate orders passed by the NFAC, Delhi both dated 14.07.2023 for A.Ys. 2014-15 and 2015-16.

**2.** At the outset, the Ld.AR submitted that grounds raised by assessee in both these appeals are identical and arises out of similar facts. For the sake of convenience, the grounds of appeal raised by assessee for A.Y. 2014-15 are reproduced as under:

*“1. The order passed by the learned Commissioner of Income Tax, NFAC, under section 250 of the Act is so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*

*2. The appellant denies itself to be assessed at Rs.72,30,710/- as against the returned income of Rs. NIL for the assessment year 2014-15 under the facts and circumstances of the case.*

*3. Grounds on legal issue:*

*a. The learned assessing officer failed to appreciate that if the appellant is to be treated as an AOP, he does not have jurisdiction over the appellant and the entire assessment proceedings is void ab initio on the facts and circumstances of the case.*

*b. The authorities below failed to appreciate that it is settled position that "Consent does not confer jurisdiction", on the facts and circumstances of the case.*

*c. The authorities below failed to appreciate that, mere participation of the appellant in the assessment proceeding cannot cure the jurisdictional defect which goes into the root of the matter, on the facts and circumstances of the case.*

*d. That the learned assessing officer ought to have transferred the case to the Jurisdictional assessing officer, who had jurisdiction to assess, "A O P" on the facts and circumstances of the case.*

*4. Grounds on receipt of Rs.72,20,000/- towards Church Building:*

*a. The authorities below have failed to appreciate that the sum of Rs.72,20,000/- is a capital receipt and is to be treated as corpus, on the facts and circumstances of the case.*

*b. The authorities below have erred in arriving at a conclusion that the said receipt is not corpus by merely relying on the nomenclature on the receipt, without appreciating the nature of the transaction, on the facts and circumstances of the case.*

*c. Without prejudice and not conceding that the receipt is a corpus receipt since the sum was received to permit peaceful enjoyment of property and is not chargeable to tax, on the facts and circumstances of the case.*

*d. The authorities below were not justified in treating the receipt as revenue in nature where it has been capitalised in the audited financial statements of the appellant, on the facts and circumstances of the case.*

*5. The appellant denies the liability to pay interest under section 234A, 234B and 234C of the Act in view of the fact that there is no liability to additional tax as determined by the learned assessing officer. Without prejudice the rate, period and on what quantum the interest has been levied are not in accordance with law and further are not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.*

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

*7. In 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 and appropriate relief be granted in the interest of justice and equity.”*

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

**3.1** Assessee is a trust carrying on activities as per the objects of the trust deed. Admittedly, assessee has not registered itself u/s. 12A of the act for the years under consideration. The Ld.AO issued notice u/s. 142(1) on 27.10.2016 for both the years under consideration calling upon assessee to file the return of income. In response, the assessee filed its return of income on

02.12.2016 declaring total income of Rs.Nil for A.Y. 2014-15 and Rs. 4,88,160/- for A.Y. 2015-16.

**3.2** Subsequently, on verification of the balance sheet by the Ld.AO, it was noticed that the assessee had credited a sum of Rs. 72,20,000/- towards Church maintenance fund during A.Y. 2014-15 and Rs. 60 Lakhs during A.Y. 2015-16. The Ld.AO was of the opinion that he had reason to believe that, income chargeable to tax has escaped assessment, within the meaning of provisions of section 147, since assessee did not have registration u/s. 12A for the years under consideration.

**3.3** The Ld.AO thus issued notice u/s. 148 of the act on 14.11.2018 for A.Y. 2014-15 and A.Y. 2015-16, calling upon the assessee to file Return of Income, in response to the notice issued u/s. 148. The assessee intimated the Ld.AO that the return filed originally may be treated as return in lieu of notice u/s. 148 of the act.

**3.4** The Ld.AO then issued notice u/s. 143(2) of the act and called upon the assessee to file details in respect of the amount received by assessee that was credited to balance sheet and under reserve and surplus as church maintenance fund. The Ld.AO based on the details furnished by the assessee, disallowed the amount received, that was credited to church maintenance fund, as assessee did not furnish details of the loaners as corpus specific.

**3.5** Aggrieved by the order of the Ld.AO, assessee preferred appeals before the Ld.CIT(A).

**3.6** Before the Ld.CIT(A), assessee filed additional evidences in the form of the registration certificate issued u/s. 12A of the act dated 25.09.2019, and also relied on various decisions in support of its claim. It was submitted that, the registration was granted to the assessee much after the date of assessment order. The Ld.CIT(A) though admitted the additional evidences filed, rejected the claim of assessee as on the date for non-availability of registration u/s. 12AA.

**3.7** Before the Ld.CIT(A), assessee also challenged the validity of reopening u/s. 148 of the act by submitting that, as on the date of issuance of notices u/s. 148, time period to issue notice u/s. 142(3) against the original return of income filed by the assessee had not lapsed. It was contended by the Ld.AR that the Ld.AO should not have issued notice u/s. 148 under such circumstances. The Ld.AR submitted that, the Ld.AO could have issued notices u/s. 148 only when the time limit for issuance of notice u/s. 143(2) has expired and the Ld.AO has formed a belief based on tangible information that income of the assessee escaped assessment.

**3.8** The Ld.CIT(A) rejected all these arguments of the assessee by holding that, the assessee has co-operated with the reassessment

proceedings and consequently, the assessment order was passed u/s. 147 of the act, cannot be objected at this stage.

**3.9** Against the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal* on both the assessment years.

**4.** At the outset, the Ld.AR submitted that the assessee filed the present appeals before this *Tribunal* with a delay of 6 days in both the appeals. He has filed the affidavit of the assessee stating as under:

*“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:*

*a. The appellant is a charitable trust and had filed its return of income for the assessment year 2014-15 on 02.12.2016 declaring NIL income. The case of the appellant was reopened for assessment by issuing a notice under section 148 of the Act and an order under section 143(3) r.w.s147 of the Act came to be passed on 26.12.2018 wherein addition of Rs.72,20,000/- was made on account of receipts towards church building.*

*b. The appellant being aggrieved filed an appeal before the Hon'ble CIT(A) and the order under section 250 of the Act was passed on 14.07.2023 dismissing the appeal.*

*c. The appellant thereafter approached the present counsel in Bangalore who sought for copies of reasons recorded, sanction accorded which were not available with the appellant and it was advised to file a RTI application and obtain such record.*

*d. A RTI application was filed and the learned assessing officer provided the copies of reasons recorded based on which the notice under section 148 was issued. The present counsel advised that additional grounds of appeal*

*were required to be raised before the Tribunal on the legal issue of reopening.*

*e. The counsel drafted the appeal memo along with the additional grounds of appeal on 10.09.2023, which were required to be signed by the authorized signatory of the appellant who was in Udupi and the documents were to be sent through courier.*

*f. The documents were couriered to Udupi on 11.09.2023 which were duly signed and received on 15.09.2023 and appeal came to be filed before this Hon'ble Tribunal on 18.09.2023 as the intervening days were weekend.*

*g. The appellant submits that due to the above reasons the appeal could not be filed within the due date i.e., 12.09.2023. Nevertheless, the appeal came to be filed on 18.09.2023 resulting in a delay of 6 days for the reasons mentioned above.*

*h. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of 6 days in filing the present appeal against the order of the learned Commissioner of Income-tax (appeals), NFAC passed under section 250 of the Act before this Hon'ble Tribunal and hear the same on merits for the advancement of substantial cause of justice.*

*i. The appellant humbly prays that this Hon'ble Tribunal considering the facts of the present case takes lenient and compassionate view and condone the delay in filing the present appeal against the order passed by the learned Commissioner of Income-tax (Appeals).*

*j. The appellant places reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT 85 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.*

*k. 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.*

*l. 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).*

*m. 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.*

*n. 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.*

*o. 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 86 Others [2000] 9 Supreme Court Cases 733 and Commissioner of Income-tax Vs. Nest Bengal Infrastructure Development Finance Corporation limited (2011) 334 ITR 269 (SC).*

*p. The appellant craves leave of this Hon'ble Tribunal to file additional submission at the time of hearing of this appeal.*

*q. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of 6 days in filing the present appeal against the order of the learned Commissioner of Income-tax (Appeals), NFAC dated 14.07.2023 before this Hon'ble Tribunal and hear the same on merits for the advancement of substantial cause of justice.”*



**4.1** The Ld.AR submitted that in view of the above, the assessee could not file the appeals before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of 6 days in filing these present appeals before this *Tribunal*. The reason for the delay in filing the present appeals were due to reason beyond the control of the assessee.

He thus prayed for the delay to be condoned.

**4.2** The Ld.DR though objected, however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeals.

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

**4.3** We note that there is a delay of 6 days in filing the present appeal which was due to various documents that was being collected at the behest of the authorised representative by the assessee. We do not find any reason to reject the application for condonation as justice must not seem to be rendered but it must be rendered. Assessee cannot be denied the opportunity of being heard which is the basic principles of natural justice.

**4.4** It is noted that there is no malafide intention on behalf of assessee in not filing the present appeals within limitation. It is noted that, there is no malafide intention on behalf of assessee in not filing the present appeals within time. In our opinion,

sufficient and reasonable cause has been made out by the assessee for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions, wherein, *Hon'ble Court* observed as under:-

*"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*

*And such a liberal approach is adopted on principle as it is realized that :*

*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 out 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.*

*.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."*

**4.5** Considering the above observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals.

**Respectfully following the above view, the delay of 6 days is condoned in both the appeals.**

**5.** The Ld.AR submitted that the assessee has filed an application for admission of additional ground that reads as under:

*“a. The notice issued under section 148 of the Act is bad in law.*

*b. The learned assessing officer was not justified in issuing a notice under section 148 of the Act, when the time limit to issue notice under section 143(2) of the Act has not lapsed for the relevant assessment year on the facts and circumstances of the case.*

*c. The order of reassessment is further bad in law and void ab initio as the learned assessing officer had no reason to believe that the income of the Appellant has escaped assessment and the reasons amounted to merely reasons to suspect, on the facts and circumstances of the Appellant's case.*

*d. That there is no tangible material available with the learned assessing officer to substantiate that there is escapement of income in the hands of appellant on the facts and circumstances of the case.*

*e. That there is no sanction accorded under section 151 of the Act. Without prejudice, the sanction if accorded, is without application of mind and based on surmises and conjectures on the facts and circumstances of the case.*

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

*g. In 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 and appropriate relief be granted in the interest of justice and equity.”*

**5.1** The Ld.AR submitted that the above grounds are commonly / identically raised for both the years under consideration. He

submitted that this issue goes to the root cause of the case and no new records needs to be looked into for disposing off the issue raised herein. The Ld.DR though could not object to the submissions of the assessee did not support the admission of additional ground.

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

**5.2** We note that the issue raised by assessee in the additional grounds is legal issue challenging the validity of notice u/s. 148 of the act even when the assessing officer had the time to issue notice u/s. 143(2) for conducting regular assessment.

**5.3** It has been submitted that no new facts needs to be considered in order to dispose of the additional grounds raised by the assessee. It is submitted that, the additional grounds raised do not require verification of any new facts. The Ld.AR, thus prayed for the admission of additional grounds so raised by assessee.

**5.4** On the contrary, the Ld.CIT.DR though opposed admission of the additional grounds, could not bring anything on record which would challenge such a right available to assessee under the Act.

**5.5** We upon perusal of the additional grounds find that these are directly connected with the validity of reassessment proceedings and no new facts needs to be investigated for

adjudicating the same. Issues alleged by the assessee is a legal issue that does not require investigation of any facts.

**5.6** Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we are admitting the additional grounds raised by the assessee. Respectfully following the above, we admit the additional grounds raised by assessee in both the years under consideration.

**Accordingly, the additional grounds filed by assessee stand admitted.**

**6.** The legal issue raised in the additional ground goes to the root cause of the assessment, it is necessary to consider this ground first.

**7.** The Ld.AR has tabulated the relevant dates for both the years under consideration in order to consider the legal issue raised by assessee.

Particulars	AY 2014-15	AY 2015-16
Date of notice u/s 142(1) requiring to file the return of Income	27.10.2016 (Pg.41 of appeal memo, assessment order Para.1)	27.10.2016 (Pg.38 of appeal memo, assessment)

Date of filing return of income in response to 142(1) notice	02.12.2016 (Pg.41 of appeal memo, Pg.27 & Pg.33 of paper book filed on	02.12.2016 (Pg.38 of appeal memo, Pg.28 & Pg.32 of
Time limit to issue notice u/s 143(2)	30.09.2017	30.09.2017
Date of 148 notice	22.06.2017 (Pg.1 of paper book filed on 05.12.2023)	22.06.2017 (Pg.1 of paper book filed on 05.12.2023)

**8.** The Ld.AR submitted that the time limit to issue notice under section 143(2) of the Act where a return of income is filed under section 139(1) or in response to notice issued under section 142(1), is 6 months from the end of the financial year in which such return of income is filed. In the present facts of the case, the return of income is filed on 02.12.2016 in response to the 142(1) notice and the time to issue notice u/s 143(2) lapses on 30.09.2017. Thus, the Ld.AO had sufficient time to issue notice under section 143(2) of the Act, to complete the assessment.

**9.** He thus submitted that, the Ld.AO proceeded to issue notice under section 148 of the Act, where the time to issue notice under section 143(2) was still available and hence the reopening notice is bad in law and the impugned order of assessment passed u/s 143(3) r.w.s 147 dated 26.12.2018 deserves to be quashed.

**10.** Reliance was placed on the following decisions in support of the above arguments.

1. *Qatalys Software Technologies [2009] 308 ITR 249 (Mad HC) [Pg. 70 of the common case law paper book].*
2. *Vardhaman Holdings Ltd., [2016] 158 ITD 843 (Chandigarh Trib) [Pg. 73 of the common case law paper book].*
3. *M/s L T Karle & Co., ITA No.354/Bang/2009, dt:11.02.2011 [Pg. 8i and 84 of the Common case law paper book].*

**11.** On the contrary, the Ld.DR placed reliance on the observations fo the Ld.AO/Ld.CIT(A) on this issue.

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

**12.** Admittedly, the assessee had not filed its original return u/s. 139 of the act. However on receipt of the notice u/s. 142(1), the assessee filed the return of income on 02.12.2016 for both the years under consideration. Under such circumstances, as per the law during the relevant years, the assessing officer has six months from the end of the financial year in which such return is filed to issue notice u/s. 143(2) of the act. In the present facts of the case, as the return of income was filed on 02.12.2016, in response to notice u/s. 142(1) of the act, the assessing officer had time to issue notice u/s. 143(2) till 30.09.2017 to conduct regular assessment u/s. 143(3) of the act. However, on 22.06.2017, notice u/s. 148 of the act was issued to the assessee in both the assessment years.

**12.1** We note that this issue has been challenged by the assessee before the Ld.CIT(A), however has been dismissed without considering the relevant provisions of the act.

**13.** It is pertinent to note that, the act does not make any distinction between the return filed u/s. 139(1) of the act or, 139(5) of the act or , upon issuance of notice u/s. 142(1) of the act. In any of the above scenario, the Assessing Officer has to treat the return of income as a valid return and a notice u/s. 143(2) has to be issued before expiry of six months from the end of the financial year in which the return of income is filed. The Ld.AO is also to issue notice u/s. 143(2), in case the return filed in all the above 3 scenarios is repudiated by him.

**14.** In the present facts of the case, the assessment was pending before the Ld.AO, as on the date of the issuance of notice u/s. 148 of the act. The original assessment proceedings were pending as the time period for issuance of notice u/s. 143(2) did not expire. In our view, section 142(1) and section 148 of the act cannot operate simultaneously. *Hon'ble Madras High Court* in case of *Qatalys Software Technologies (supra)* has held that, if the proceedings are pending u/s. 143 of the act, it looks inappropriate to call for a return u/s. 148 of the act because, income cannot be said to have escaped assessment when the assessment proceedings are pending. *Hon'ble High Court* thus held that, the two provisions governed under different fields and can be exercised only under different circumstances.



**15.** Similar view has been taken in a decision by *Hon'ble Bombay High Court* in case of *CIT vs. Dr. G.K. Pendkar* reported in (1993) 69 *Taxman* 107 wherein it was held as under:

*“5. At the outset, the learned counsel for the assessee stated that the issue involved in the aforesaid question is fully covered by the decision of the Supreme Court in the case of CIT v. Suraj Pal Singh [1991] 188 ITR 297 in favour of the assessee, inasmuch as the Supreme Court has upheld the decision of the Allahabad High Court which was relied on by the Tribunal. He, therefore, submitted that the reference may be answered accordingly. Further, he also brought to our notice the decision of the Gauhati High Court in the case of Smt. Savitri Rani Malik v. CIT [1990] 186 ITR 701, which has also taken a similar view in favour of the assessee. Faced with this position, the learned counsel for the revenue strongly relied on the orders of the income-tax authorities and submitted that the Tribunal was not justified in holding that the assessments framed by the ITO were barred by limitation.*

*6. We have considered the submissions of the parties. It would be clear from the facts of the case and also from the question itself that the ITO had not come across' any alleged item of concealment before normal period of limitation ran out. That being so, the above decision of the Supreme Court is squarely applicable.”*

**16.** In view of the above discussions and judicial precedence by *Hon'ble Supreme Court*, *Hon'ble High Court* and Benches of this *Tribunal*, judicial precedence relied by the Ld.AR, we have no hesitation to say that there was no need for the Assessing Officer to issue notice u/s. 148 as there was time period to issue notice u/s. 143(2) of the act for conducting the assessment u/s. 143(3) of the act. Accordingly, the additional grounds raised by assessee in both the years under consideration stands allowed and the notice u/s. 148 by the Ld.AO for both the assessment years stands quashed.

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As a consequence, the assessment order passed u/s. 143(3) r.w.s. 147 of the act also deserves to be quashed.

As we have allowed the legal claim raised by the assessee, the issue on merits does not arise as the assessment order becomes invalid at this stage.

**In the result, both the appeals filed by assessee stands allowed on the legal issue raised in the additional ground.**

**Order pronounced in the open court on 08<sup>th</sup> April, 2024.**

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 08<sup>th</sup> April, 2024.  
/MS /

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore