

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No. 234/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Shri Chhedilal Kurre  
Jai Niketan, Om Nagar,  
Bilaspur (C.G.)-495 001  
PAN : AGWPK2119E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer  
Ward-2(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.11.2023

घोषणा की तारीख / Date of Pronouncement : 06.11.2023

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 18.07.2022, which in turn arises from the order passed by the A.O under Sec. 147 of the Income-tax Act, 1961 (in short 'the Act') dated 18.12.2019 for the assessment year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That the Ld. National Faceless Appeal Centre (NFAC) has grossly erred in facts and circumstances of the case to confirm the addition of Rs.3,80,000/-.
2. That the addition of Rs.3,80,000/- confirmed without appreciating the facts is not justified.
3. That the assessee craves leave to raise any other ground/s on or before the date of hearing to prove that the order is bad.”

2. On the basis of information that the assessee had made cash deposits of Rs.14,06,500/- (exceeding Rs.10 lacs) in his savings bank account during the year but had failed to explain the nature and source of the same on the basis of supporting material, the A.O holding a belief that the aforesaid amount was the income of the assessee that had escaped assessment, thus, initiated proceedings u/s.147 of the Act. Notice u/s. 148 dated 22.03.2019 was issued by the A.O. In compliance, the assessee filed his return of income on 17.09.2019 declaring an income of Rs.2,36,400/-.

3. As the assessee had failed to come forth with any plausible explanation as regards the cash deposits of Rs.3.80 lacs (out of Rs.14,06,500/-) in his bank account, therefore, the A.O made an addition of the same u/s. 69A of the Act. Accordingly, the A.O vide his order passed u/s.147 of the Act dated 18.12.2019 determined the income of the assessee at Rs.6,16,400/-.

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals) while approving the view taken by the A.O held as under:

“5. Determinations:

Against the order of the A.O. u/s 147 of the Act, the appellant filed an appeal. Notices of hearings were sent on ITBA portal given by the appellant in form No. 35 and also the available on record. I have considered the impugned order. It has been noted from the appeal record that the appellant was given opportunity to present its appeal by way of submissions of details, documents, evidences and arguments as follows:

Sl. No.	Notice No.	Date of issue of notice/Date of speed post	Date fixed for hearing
1.	By DIN: ITBA/NFAC/F/APL_1/2020- 21/1029342399(1)	29.12.2020	31.12.2020
		31.12.2020	On given date neither any compliance received nor any adjournment letter was filed.
2.	By DIN: ITBA/NFAC/F/APL_1/2021- 22/1038165557(1)	28.12.2021	07.01.2022
		07.01.2022	On given date again neither any compliance received nor any adjournment letter was filed.
3.	By DIN: ITBA/NFAC/F/APL_1/2022- 23/1042774285(1)	19.04.2022	25.04.2022
		25.04.2022	On given date neither any compliance received nor any adjournment letter was filed.
4	By DIN: ITBA/NFAC/F/APL_1/2022- 23/1043346045(1)	06/06/2022	20/06/2022 <b>Final opportunity</b>
		20/06/2022	On given date neither any compliance received nor any adjournment letter was filed.

5.2 As has been brought out above, it is evident that the appellant is not interested in filing any details during t/e appellate proceedings and to avail the opportunity under the principle of natural justice. As many as four (04) notices were issued through ITBA portal as noted above. However, it is a matter of record that any kind of

documents or details were not submitted by the Authorized Representative of tk.: appellant.

5.2 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another (118 ITR 461) (at pages 477 & 478) that appeal does not mean filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol Vs. Union of India in Excise Appeal No. 62 of 2009.

5.3 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempt. Same is the position in cases of all allowance, deductions, claims or loss, etc. since an appeal is nothing but the claim of the appellant that he has been unduly unjustifiably taxed, it is for the appellant to prove its case. The appellant has not availed any opportunity to do so.

5.4 Since, the Appellant has not presented any argument and submission or any paper filed in support of its claim, the appeal is decided judiciously based on materials available on record.

5.5 Since the appellant has chosen not to attend the appeal proceedings, the additions made by the Assessing Officer are sustained, on the reasons recorded in the Assessment Order.

6. In the result, this appeal is DISMISSED.”

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal.

6. As is discernible from the records, the hearing of the appeal was fixed for 12.10.2023, on which date as none appeared for the assessee appellant,

therefore, in all fairness the same was adjourned to 02.11.2023. Notice dated 12.10.2023 intimating the fixation of appeal for 02.11.2023 was sent to the assessee vide registered post and was validly served upon him on 20.10.2023, but once again the assessee neither did put up any appearance nor filed any letter requesting for adjournment. As the assessee despite having been intimated about the hearing of the appeal, had failed to put up an appearance before me, therefore, I am constrained to proceed with and dispose off the appeal as per Rule 24 of the Income Tax Appellate Tribunal Rules, 1963 after hearing the Ld. Departmental Representative ( for short 'DR') and perusing the material available on record.

7. At the threshold of hearing of the appeal, the Ld. DR took a strong exception to the maintainability of the appeal as the same involved an inordinate delay of 280 days. It was submitted by the Ld. DR that as the assessee had failed to come forth with any cogent reason to explain the delay involved in filing of the present appeal, the same, thus, was liable to be dismissed on the said count itself.

8. I have heard the Ld. DR, perused the orders of the lower authorities as well as material available on record. On a perusal of the records, I find that the assessee had filed an application seeking condonation of delay dated 26.05.2023 a/w. "affidavit" dated 07.07.2023. It is stated by the assessee that he is an elderly person, and is not conversant with the nuances of computer. Elaborating further, it is stated by him that as he had not received any Short Message Service (SMS) regarding passing of the order on real time basis, therefore, he had failed to file the present appeal within stipulated time period. It is further stated by the assessee

that he learnt about the order passed by the CIT(Appeals) only when he was intimated about the same by his counsel who in turn gathered about it from the income tax portal, which revealed that the appeal order of the CIT(Appeals), NFAC, Delhi had been passed in his case. Referring to the aforesaid facts, it is stated by the assessee that as the delay of 122 days had occasioned for bonafide reasons, therefore, the same in all fairness be condoned. For the sake of clarity, the facts stated by the assessee in his application are culled out as under:

“Assessee has filed his income tax appeal against the order passed by the Assessing Officer U/s 271(1)(c) of IT act, 1961, vide order dated 23/01/2023 for which no real time information has been received by the Assessee till date.

That the Assessee is an elderly person and not computer friendly and has not received any SMS regarding the passing of the order on real time basis. While received the intimation about the overdue demand, Assessee has approached to the Counsel and on verification of portal it is found that there is an appeal order from the NFAC, Delhi, for the year under consideration, hence it will not be possible to hand over the documents to the Counsel for further action, hence appeal could not be filed in limitation period.

That, there is a delay in filing of appeal for 122 days due to unaware about the passing of the order online of the Assessee, therefore it is requested that the delay of 122 days may kindly be condoned as the delay was occurred due to non-receipt of any real time SMS of any communication to the Assessee, and the appeal may kindly be heard on merits of the case and obliged.”

9. On a perusal of the records, it transpires that as the delay involved in the present appeal against the impugned order passed by the CIT(Appeals), NFAC dated 18.07.2022 worked out to 280 days, therefore, the registry vide its letter dated 26.06.2023 brought the said fact to the assessee and called upon him to rectify the said defect within 10 days. In reply, the assessee had placed on record

an affidavit dated 07.07.2023 (which was received vide registered post on 28.07.2023) wherein he had merely reiterated that the application for condonation of delay that was filed before the Tribunal has been drafted at his instruction and contents of the same have been read and explained to him. To sum up, the assessee instead of removing the defect and correcting the period of delay involved in filing of the present appeal i.e. 280 days (as against 122 days) as pointed out by the registry, had relied upon his earlier application seeking condonation of delay of 122 days. Apart from that, I find there is an application dated 26.05.2023 of the assessee wherein he had stated that a delay of 330 days is involved in filing of the present appeal.

10. I have thoughtfully considered the application filed by the assessee seeking condonation of delay of 122 days a/w. affidavit dated 07.07.2023 (supra) ( affirming the aforesaid period of delay) and also, the another letter dated 26.05.2023 pointing out a delay of 330 days. It is incomprehensible that though the assessee was specifically pointed out by the registry, and rightly so, that the delay involved in filing of the present appeal was 280 days (supra), but he instead of correcting the period of delay, had once again affirmed the correctness of the contents of his earlier application dated 26.05.2023 by filing an affidavit dated 07.07.2023. For the sake of clarity, the facts deposed by the assessee in his affidavit dated 07.07.2023 are culled out as under:

**भारतीय गैर न्यायिक**

**भारत**

**FIFTY RUPEES**

**Rs.50**

**INDIA NON JUDICIAL**

**छत्तीसगढ़ CHHATTISGARH**

**T 466912**

BEFORE THE HON'BLE INCOME-TAX APPELLATE  
TRIBUNAL, RAIPUR BENCH, RAIPUR (C.G)

Name of the Appellant	Chhedil Lal Kurre
PAN/Status	AGWEP2119E / Individual
ITA No.	

I, Chhedilal Kurre S/o- Late Shri Dhanush Kumar Kurre aged about 72 years resident of Jai Niketan, Om Nagar, Jarhabhata, Bilaspur 495001, Chhattisgarh do hereby state on oath as under:-

- That I am applicant and aware of facts of the case and competent to swear that affidavit.
- That the accompanying application for Condonation of Delay in filing Appeal before Hon'ble Income-tax Appellate Tribunal has been drafted at my instructions and it has been read and explained to me and I have understood the contents thereof. I say that the facts stated therein are true and correct to my knowledge and belief and that submissions made therein are based on the legal advice received by me.
- This affidavit is being sworn in support of Application for Condonation of Delay in filing Appeal before Hon'ble Income-tax Appellate Tribunal, Raipur Bench, Raipur.

*Chhedilal Kurre*  
Chhedilal Kurre

*Arjun Kumar Pandey*  
Notary Advocate  
Cml Dist. - Bilaspur (C.G)  
7/7/2023

11. Considering the aforesaid facts, I am constrained to observe that though the assessee had come up with an explanation/ reasons leading to the delay of 122 days in filing of the present appeal, but had failed to come up with any reason as regards the delay of the balance period of 158 days [280 (-) 122]. I am of the considered view that considering the aforesaid lackadaisical approach adopted by the assessee who had not only failed to file the appeal within stipulated time period, but also by adopting a callous approach, not removed the defect which was pointed out by the registry vide letter dated 26.06.2023, therefore, the inordinate delay involved in filing of the present appeal reason for which till date had not been explained by the assessee before me, does not merit to be condoned.

12. Accordingly, the appeal filed by the assessee is dismissed for want of any explanation as regards the delay of 158 days [280 (-) 122] involved in filing of the present appeal.

13. In the result, appeal of the assessee is dismissed as barred by limitation in terms of the aforesaid observations.

Order pronounced in open court on 06<sup>th</sup> day of November, 2023.

Sd/-

**(रवीश सूद /RAVISH SOOD)**

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 06<sup>th</sup> November, 2023.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.