

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)  
&  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 243/PAT/2023  
Assessment Year: 2014-2015**

***North Bihar Construction Pvt. Limited,.....Appellant  
Singh Sadan, Veer Kunwar Singh Path,  
Danapur Cantt., Patna-801503, Bihar  
[PAN:AABCN9870B]***

**-Vs.-**

***Deputy Commissioner of Income Tax,.....Respondent  
Circle-3, Darbhanga  
Darbhanga-846001, Bihar***

**Appearances by:**

*Shri Pankaj Jyoti, C.A., appeared on behalf of the  
assessee*

*Shri Ajay Kr. Shukla, JCIT, Sr. D.R., appeared on behalf  
of the Revenue*

**Date of concluding the hearing: November 13, 2024  
Date of pronouncing the order: December 10, 2024**

**O R D E R**

**Per Duvvuru RL Reddy, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 31<sup>st</sup> January, 2023 passed for Assessment Year 2014-15.

2. The appeal is time barred by 108 days in filing the appeal by the assessee. However, the assessee filed a condonation petition saying that the assessee is not aware of the order passed by the Id. CIT(Appeals) and he has not received the physical copy of the order. When the assessee came to know about the *ex-parte* order passed by the Id. CIT(Appeals), the assessee is not able to approach the Id. Authorized Representative, thereafter again approached the Id. A.R. to prefer an appeal, due to that there was a delay of 108 days in filing the appeal before the Tribunal. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, we are inclined to condone the delay since the delay is not due to negligence on the part of assessee and the assessee has established sufficient cause to condone the delay. We are of the view that the appeal was filed belatedly due to non-service of the physical copy of the order of Id. CIT(Appeals). Since the Id. CIT(Appeals) has passed the *ex-pate* order, considering the facts and circumstances of the case, we are inclined to condone the delay of 108 days. Hence the delay is condoned.

4. Brief facts of the case are that the assessee is a Private Limited Company, which is engaged in the business of construction. The assessee filed its return of income for the assessment year 2014-15 declaring total income at Rs.27,46,090/-. The case of the assessee was selected for scrutiny for the reason that there is a mismatch in sales turnover reported

in Audit Report and ITR. Accordingly notice under section 143(2) of the Act was issued and served upon the assessee. In spite of service of notice, the assessee did not file any reply or respond for the same. Due to that, ld. Assessing Officer passed the assessment order under section 144 of the Act declaring total income at Rs.96,22,870/-.

5. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has issued several notices, but the assessee after receipt of the notices did not file any written submission or furnish any evidence to support its claim. Therefore, the ld. CIT(Appeals) dismissed the assessee's appeal based on the material available on record.

6. On being aggrieved, the assessee preferred an appeal before the Tribunal raising the following grounds:-

*(1) The Assessee could not comply with the notices sent by CIT(A) as all notices were sent on mail id of Accountant who left the assessee and assessee was not informed about fixation of date of hearing. Hence, it is requested to kindly instruct CIT(A) to give one more chance of hearing for the sake of natural justice.*

*The Assessee company has got its account duly audited, each and every entry verified by the Chartered Accountant. All the deposits made in the Bank Account are properly reflected in the books of Accounts. Moreover, the assessee Company deals in with only Government department and hence all Payments are made only through Bank Accounts and after deducting TDS on these payments. This reflects completely distorted figure which any accounting principle cannot justify for the reason that:*

*(a) Cheque Deposited may Include several payments which may not be part of Contractual receipts such as refund of Security, refund of FD, IT Refund etc. These payments can not by any stretch of imagination construe d as contractual receipts even though cheque has been deposited in the Bank Account.*

*b) The Contractual receipts also include various deductions, some of which are revenue and some of which are capital in Nature. Deductions such as Labour cess, royalty and of similar nature are included in turnover and separately debited to Profit and Loss Account as expenditure. Certain deductions such as TDS, Security deposit and of similar nature are transferred to Balance - Sheet and these items are also included in Turnover of the Company. By, taking cheque deposited in account only as part of turnover, the learned A.O. failed to take into account this fact. The Learned A.O.in has order defined Bills receivable as Contracts payments due but not received during the year. But, if the cheque has been received these no longer can be termed as Bills receivable, it can only be reflected in Bank Accounts or can be separately Put under the Head Cheque In Hand. The learned A O f ailed to think of difference between Cheque in hand and Bills receivable. Nevertheless, these Cheque Bills receivable, as termed by the Learned A.O. are already reflected in the turnover of the company.*

7. We have heard both the sides and perused the relevant material placed on record. It was the submission of the assessee that ld. Assessing Officer as well as ld. CIT(Appeals) have not given sufficient opportunities to the assessee to substantiate its case. The assssee was unaware of the proceedings before the ld. CIT(Appeals) and assessee has not received any notice. Therefore, he pleaded for one more opportunity of being heard to the assessee to substantiate its case.

8. On the other hand, ld. Departmental Representative argued that the ld. CIT(Appeals) has given ample opportunities but the assessee did not appear before the ld. CIT(Appeals) as well as before the ld. Assessing Officer. Therefore, he pleaded to uphold the orders passed by the revenue authorities.

9. We have heard both the sides and perused the material available on record. Considering the facts and circumstances of

the case, in order to meet the principle of natural justice, we are inclined to set aside the order passed by the ld. CIT(Appeals) and remit the matter back to the file of ld. CIT(Appeals) with a direction to provide one more opportunity of being heard to the assessee. At the same breath, we also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. CIT(Appeals) failing which the Ld. CIT(Appeals) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

**10. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on 10/12/2024.

Sd/-

Sd/-

**(Rajesh Kumar)**  
**Accountant Member**

**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

***Kolkata, the 10<sup>th</sup> day of December, 2024***

- Copies to :*(1) *North Bihar Construction Pvt. Limited,*  
*Singh Sadan, Veer Kunwar Singh Path,*  
*Danapur Cantt., Patna-801503, Bihar*
- (2) *Deputy Commissioner of Income Tax,*  
*Circle-3, Darbhanga*  
*Darbhanga-846001, Bihar*
- (3) *Commissioner of Income Tax (Appeals);*  
*National Faceless Appeal Centre (NFAC),*  
*Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*

*(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***