

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“PATNA BENCH, PATNA**  
**VIRTUAL HEARING AT KOLKATA**

**Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.427/Pat/2024**  
Assessment Year: 2016-17

**Dinesh Kumar.....Appellant**

C/o Bhurendra Prasad,  
Near B D Public School,  
Buddha Colony,  
Patna – 800001.

**[PAN: BXBPK1456M]**

**vs.**

**ITO, Ward-5, Patna..... Respondent**

**Appearances by:**

Shri Shailendra Sinha, AR appeared on behalf of the appellant.

Shri Ashwani Kumar, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 27, 2025

Date of pronouncing the order : January 28, 2025

**आदेश / ORDER**

**Per Sonjoy Sarma, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 31.03.2024 of the Commissioner of Income Tax (Appeals), Jaipur [hereinafter referred to as ‘CIT(A)’] passed u/s 250 of the Income Tax Act (hereinafter referred to as the ‘Act’).

2. Brief facts of the case are that the assessee filed his return of income for the assessment year 2016-17 by showing total income of Rs.2,71,810/-. The case of the assessee was selected for scrutiny under CASS followed by notices issued u/s 143(2) and 142(1) of the Act. The Assessing Officer asked the assessee to produce books of accounts, ledger, cash book etc. before him but the assessee did not comply. Accordingly, the Assessing Officer after verification of return of income found that the assessee had filed balance sheet showing gross total income of Rs.36,00,712/- and the assessee incurred miscellaneous

expenses of Rs.31,78,900/-. Therefore, the net profit comes to Rs.4,21,812/-. The Assessing Officer also found that on perusal of Form 26AS, the gross receipts was civil contract work under TDS section 194, Rs.4025927/- on which TDS was deducted. As the assessee was shown gross receipts of Rs.3600712/-, therefore, the difference of Rs.425212/- was treated as income from business and profession. The Assessing Officer also disallowed the unsecured loan of Rs.1445600/- and treated the same as income from other sources. Further, the Assessing Officer denied the claim under chapter VIA of Rs.150000/- and added back into the total income of the assessee by assessing total income of the assessee at Rs.2292630/-.

3. Aggrieved by the above order, the assessee preferred appeal before the ld. CIT(A) but the ld. CIT(A) dismissed the appeal solely on the ground of delay of 18 months in filing the appeal before him and the appeal of the assessee was decided ex parte without looking into merits of the case.

4. Dissatisfied, the assessee is in appeal before this Tribunal raising multiple ground but the primary contention of the ld. AR is that the ld. CIT(A) was erred in dismissing the appeal only on ground of delay. The ld. AR contended that the delay in filing the appeal is due to negligence of the earlier counsel engaged who failed to file the appeals on time and due to the negligence of the counsel, the assessee should not be suffered. The ld. AR further submitted that the delay in filing the appeal is neither wilful nor attributable to any extraneous or ulterior motive on the part of the assessee and the assessee is not benefitted in any way from delayed filing of this appeal. Therefore, he prayed that the Tribunal may remand back the matter to the file of the ld. CIT(A) with a direction to re-examine the issue afresh after condoning such delay.

5. We, after hearing the rival submissions and perusing the materials available on record, find that the appeal of the assessee was simply

dismissed by the Id. CIT(A) on the ground of condonation of delay of about 18 months in filing the appeal before the Id. CIT(A) without looking into merits of the case and also the case of the assessee remained unrepresented before the Id. CIT(A). The principles of natural justice cannot be sacrificed in tax proceedings denying of taxpayer's right to be heard on merits solely due to procedural lapses undetermined principles. Hon'ble Supreme Court in number of cases, time and again, held that when merits and technicalities pitted against each other, then merit alone deserves to be prevailed, because, if you throw out a meritorious case out of judicial scrutiny on the grounds of technicalities, then you may deprive the right of the petitioner in pursuing their case. Moreover, natural justice demands that cases be decided on merits as prescribed u/s 249(3) of the Act which allows the condonation of delay if sufficient cause is explained. Deciding the appeal without going into the merit of the case is led to undue hardship and is a violation of principles of natural justice. We, therefore, deem it necessary to remand back the issue to the file of the Id. CIT(A) with a direction to condone the delay of 18 months in filing the appeal before the Id. CIT(A) and decide the issue on the merits of the case. The assessee is also directed to comply with the notices that may be issued by the Id. CIT(A) served without fail.

6. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

***Kolkata, the 28<sup>th</sup> January, 2025.***

Sd/-

**[Rakesh Mishra]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sonjoy Sarma]**

न्यायिक सदस्य/Judicial Member

Dated: 28.01.2025.

RS

*Copy of the order forwarded to:*

1. Dinesh Kumar
2. ITO, Ward-5, Patna
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches