

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.21/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Rameshwar Thakur
Bharitola, Chipara,
Dalli Rajhara (C.G.)-491 228
PAN : ADZPT6030H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(3), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Akansha Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 11.02.2025

घोषणा की तारीख / Date of Pronouncement : 19.02.2025

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 25.11.2024, which in turn arises from the order passed by the A.O under Sec. 144 of the Income-tax Act, 1961 (in short 'the Act') dated 28.11.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. That on the facts and in the circumstances of the case and in law, the assessment order passed by the Id. Assessing officer u/s.144 of the Act dated 28/11/2019 is illegal and void ab initio.
2. That on the facts and in the circumstances of the case and in law, the order passed by the Id. CIT(A), National Faceless Appeal Centre u/s.250 of the Act dated 25/11/2024 is illegal and incorrect.
3. That on the facts and in the circumstances of the case and in law, the Id. CIT(A), National Faceless Appeal Centre has defied the principles of natural justice by not allowing proper opportunity of being heard.
4. That on the facts and in the circumstances of the case and in law, the Id. CIT(A), National Faceless Appeal Centre has erred in condoning the delay in filing of appeal before CIT(A).
5. That on the facts and in the circumstances of the case and in law, the Id. CIT(A), NFAC erred in sustaining the addition of Rs.20,00,000/- made by the AO u/s 69A of the Act.
6. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.”

2. Succinctly stated, the A.O based on information gathered by him from AIMS module of ITBA that though the assessee had during the demonetization period i.e. 09.11.2016 to 30.12.2016 made cash deposits of Rs.20 lacs in his bank account No.30894735705 with State Bank of India, Branch: Bhilai, but had not filed his return of income for the said year, thus, issued notice u/s. 142(1) of the Act, dated 10.03.2018 calling upon him to file his return of income for the A.Y.2017-18. However, the assessee failed to comply with the aforesaid notice and did not file his return of income. Thereafter, the A.O issued notice u/s. 142(1) of the Act, dated 08.08.2009 a/w. questionnaire which also remained uncomplied. Again notice u/s. 142(1) of the Act, dated 22.07.2019 was dropped in the email id of the assessee a/w. a copy of the same forwarded though the Inspector attached with the AO's office. As the assessee failed to comply with the aforesaid notices, therefore, the A.O was constrained to proceed with and frame the assessment to the best of his judgment u/s. 144 of the Act. Accordingly, "Show Cause Notice", dated 24.10.2019 was issued to the assessee to put forth an explanation as to why assessment may not be framed to the best of his judgment u/s. 144 of the Act.

3. Thereafter, the A.O vide notice issued u/s. 133(6) of the Act sought for information from the Branch Manager of the State Bank of India, Branch: Rajhara for furnishing account opening form, bank account statement, KYC details of cash deposits during demonetization period,

money trail, credit entries, debit entries and details of amount/sum transferred to other accounts etc. In response, the bank provided the requisite details which revealed that the assessee, viz. Shri Rameshwar Thakur had made cash deposits of Rs.10 lacs each (in SBNs) in his bank account holding with State Bank of India as under:

Sl. No.	Name & Address of Bank	Bank Account No.	Date of deposit	Cash deposit
i.	State Bank of India	30894735705	11/11/2016	10,00,000/-
ii.	State Bank of India	36341783815	23/12/2016	10,00,000/-
	Total			20,00,000/-

4. As the assessee had neither filed his return of income nor furnished any explanation as regards the source of the aforesaid cash deposits of Rs.20 lacs, therefore, the A.O based on a detailed analysis of the material available before him held the entire amount of Rs.20 lacs (supra) as the assessee's unexplained money u/s. 69A of the Act. Accordingly, the A.O vide his order passed u/s.144 of the Act, dated 28.11.2019, after making the aforesaid addition determined the income of the assessee at Rs.23.03,996/-.

5. Aggrieved, the assessee assailed the order passed by the A.O in appeal before the CIT(Appeals) on 04.08.2023. As the appeal filed by the

assessee involved a delay of 1316 days, therefore, the assessee had filed an application seeking condonation of the delay stating, as under:

“Subject: Application for condonation of delay in filing of appeal u/s 246A of the Act. With reference to above this appeal is delayed by 1316 days for which the appellant hereby explains the following reasons:

a. I am an individual having residence at Bharritola, Balod (C.G.)

b. That my income for the year under consideration is below taxable limit and therefore, I did not file my return of income.

c. That I was unaware about the issuance of notice by the assessing officer and about the ongoing assessment proceedings. I have not received any communication with regard to the various notices as stated in the assessment order.

d. That due to unaware about the ongoing assessment proceedings, I did not participate in the assessment proceedings and which resulted in an expert assessment order.

e. That I came to know about the assessment order and consequent demand only when my bank accounts were attached by the income Tax Department.

f. That I am residing in a remote village and does not have services of tax consultants, who can guide me for the same. I have consulted a tax consultant at Raipur who has guided me that an appeal should be filed before the Commissioner of Income Tax (Appeal) along with an application for condonation of delay. Accordingly, I am filing the appeal along with an application for condonation of delay.

g. That the appeal is delayed by 1316 Days due to the reasons as stated above.

h. That I have no intention to jeopardize the interest of the revenue by delaying the filing of the appeal. In view of above facts and circumstances, as the delay in filing appeal is due to being not aware of income tax provisions and the proceedings though the appellant otherwise is a compliant assessee who is regularly filing its return of income and making other compliances as per the provision of the Act, hence, the delay

must be condoned. Kindly accede the condonation application and admit the appeal.”

However, the CIT(Appeals) holding a conviction that as the assessee had failed to come forth with any plausible explanation regarding the delay of 1316 days involved in filing of the appeal before him, therefore, dismissed the same as not maintainable. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“5. FINDINGS & DECISION

5.1. I have gone through the Assessment Order and grounds of appeal filed by the appellant. It is observed that the date of notice of demand mentioned is dated 28-Nov-2019 and the appellant has filed appeal on 04Aug-2023, which is beyond statutory permissible time limit of 30 days. Overall, the delay is 1316 days.

5.2. The appellant mentioned that he was not aware of the ongoing proceedings. Thus, there was delay in filing of appeal.

5.3. Condonation of delay being a discretionary power available to appellate authority, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable.

5.4. Thus, belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day.

5.5. The condonation of delay cannot be a routine affair. A person, who is not vigilant, is not entitled for the relief after a prolonged period.

5.6. In other words, for condonation of delay, the reasons adduced must be properly pleaded, convincing and acceptable and explanation should be offered for condonation of the delay. Unless proper explanation is offered, the Appellate authority could not exercise its discretion in the proper perspective to advance substantial justice.

5.7. The appellant has mentioned that he was not aware of any income tax proceedings being conducted in his case. The reason is not found to be justified and in absence of the valid reason, the delay cannot be condoned. The appeal filed is time barred and is not maintainable ab initio.

5.8. Accordingly, the appeal of the appellant is dismissed.”

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

7. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home her contentions.

8. Ms. Akansha Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold of hearing, submitted that the CIT(Appeals) without appreciating the bonafide reasons which had resulted to the delay involved in filing of the appeal before him, had most arbitrarily dismissed the same as not maintainable. Elaborating on her contention, the Ld. AR submitted that the assessee who is a retired employee from Steel Authority of India Limited (SAIL) had not filed his return of income for the subject year for the reason that the same was below the taxable

limit. The Ld. AR submitted that the assessee had remained unaware about the ongoing assessment proceedings and, thus, for the said reason had failed to participate in the same, which had resulted to an ex-parte order passed u/s. 144 of the Act. Carrying her contention further, the Ld. AR had drawn my attention to an “affidavit”, dated 10.02.2025 that was filed by the assessee, wherein, he had explained the reasons, due to which, he had remained unaware about the assessment proceedings. On a perusal of the “affidavit”, it transpires that it is the claim of the assessee that though he had in his return of income filed for A.Y.2014-15 provided the email id viz.vnonhare@gmail.com, however the same, thereafter, was changed by him to ashokchoubey@gmail.com in the returns of income filed for A.Y.2015-16 and A.Y.2016-17. The Ld. AR submitted that the notice(s) issued by the A.O during the course of the assessment proceedings u/s. 142(1) of the Act (as gathered from e-portal account of the assessee) were dropped in his old email account i.e. vnonhare@gmail.com and, thus, for the said reason, the assessee had remained unaware about the ongoing assessment proceedings. The Ld. AR submitted that the assessee had learnt about the framing of the assessment by the A.O vide his order passed u/s. 144 of the Act, dated 28.11.2019 only when his bank account was attached by the department. The Ld. AR to buttress her claim had taken me through the “Para-(e)” of the “affidavit” that was filed by the assessee explaining the reasons that had resulted to the delay involved in

filing of the appeal before the CIT(Appeals), Page 2 of the assessment order. The Ld. AR backed by the aforesaid facts, submitted that as the delay involved in filing of the appeal before the CIT(Appeals) had occasioned due to boanfide reasons and not on account of any lackadaisical conduct of the assessee, therefore, the same in all fairness should have been condoned by him. The Ld. AR further submitted that as the assessee is a retired employee from Steel Authority of India Limited (SAIL), aged about 60 years, therefore, in all fairness, the matter be restored to the file of the CIT(Appeals) with a direction to re-adjudicate the same after condoning the delay therein involved.

9. The Ld. AR adverting to the impugned addition of Rs.20 lacs made by the A.O, submitted that the assessee during the demonetization period had only made a cash deposit of Rs.10 lacs in his bank account. The Ld. AR in support of her aforesaid contention had drawn my attention to the copy of the assessee's bank account No.30894735705 with State Bank of India, Branch: Bhilai, which revealed that a cash deposit of Rs.10 lacs was made by the assessee on 11.11.2016. Elaborating on the source of the cash deposit, the Ld. AR had drawn my attention to the fact that on 25.10.2016 i.e. in the immediately preceding pre-demonetization period, the FDR of the assessee had matured for a consideration of Rs.10,24,372/-, out of which, the cash withdrawal of Rs.10 lacs was made by him on 26.10.2016. Carrying her contention further, the Ld. AR

submitted that as the demonetization scheme was announced by the government w.e.f. 09.11.2016, therefore, the assessee who had with him the demonetized currency (SBNs) of Rs.10 lacs that was sourced from the cash deposits of Rs.26.10.2016 (supra) had deposited the same in his bank account on 11.11.2016. The Ld. AR submitted that based on the aforesaid facts, it could safely be concluded that the cash deposit (SBN) of Rs.10 lacs made by the assessee in his bank account during the pre-demonetization period was sourced out of the money which was available with him during the pre-demonetization period. The Ld. AR further submitted that the alleged cash deposit of Rs.10 lacs in the assessee's bank account No.36341783815 held with in State Bank of India, Branch : Rajhara was based on perverse and incorrect observation of the A.O. The Ld. AR had drawn my attention to Page 10 of APB, which revealed that the said account was a "FDR, STD-GEN-PUB A/c.", and a deposit of Rs.10 lacs was disclosed under the head "credit" on 23.12.2016. The Ld. AR submitted that the aforementioned amount of Rs.10 lacs that was credited in the aforesaid bank account No.36341783815 (supra) was sourced out of the transfer from the assessee's bank account No.30894735705 with State Bank of India, Branch: Bhilai on 23.12.2016. The Ld. AR based on her aforesaid contention, submitted that as the assessee had during the subject year only made a cash deposit of Rs.10 lacs (supra), which was duly explained by him to have been sourced out of the cash withdrawals

made by him from the same bank account during the pre-demonetization period, therefore, no addition was called for in his case u/s. 69A of the Act.

10. Per contra, Dr. Priyanka Patel, Ld. Sr. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

11. I have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties in the backdrop of the orders of the lower authorities. Admittedly, it is a matter of fact borne from record that the appeal filed by the assessee before the CIT(Appeals) involved a delay of 1316 days, for which the assessee had filed an application before the CIT(Appeals) stating the reasons leading to the same. However, before proceeding any further, I deem it fit to cull out the "affidavit" that has been filed by the assessee explaining the reasons as to why he had failed to participate in the assessment proceedings, which reads as under:

S 239669

तीसरा CHHATTISGARH

I, Rameshwar Thakur, S/o Halakhor Thakur aged about 60 years identified by PAN ADZPT6030H at present address Village Bharritola, District Balod (C.G.) Pincode 491228 do hereby solemnly affirm and state on oath as under:

- I am an individual having residence at Village Bharritola, Balod (C.G.).
- That my income for AY 2017-18 was below minimum income taxable limit and therefore, I was not required to file return of income under the provisions of Income Tax Act, 1961.
- That I was unaware about the issuance of notice by the assessing officer as the notices were served on the mail id VNONHARE@GMAIL.COM. This mail was mentioned in the return of income filed by me for the AY 2014-15. However, in the return of income filed for the AY 2015-16 and AY 2016-17, the mail id has been changed to ashokchoubey@gmail.com.
- That for the year under consideration, I have purchased FDR of Rs. 10,00,000/- on 03/06/2016 from my SBI Account No. 30894735705. Such FDR was redeemed on 25/10/2016 and I have received the redemption proceeds of Rs. 10,24,372/-. Thereafter, I withdrew Rs. 10,00,000/- on 06/10/2016. After the announcement of demonetisation scheme by the Government of India on 08/11/2016, I re-deposited the cash of Rs. 10,00,000/- on 11/11/2016 which was withdrawn on 06/10/2016.


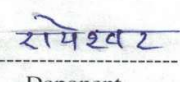
Further, out of the cash deposited by me on 11/11/2016, I purchased FDR of Rs. 10,00,000/- from State Bank of India bearing Account no. 36341783815 on 23/12/2016.

VERIFICATION

I, Rameshwar Thakur, the above-named deponent do hereby verify that the contents of para (a) to (e) are true to the best of my knowledge and belief.

Place: Balod

Date: 10/02/2025

On a conjoint perusal of the aforesaid “affidavit”, dated 10.02.2025 a/w. the application filed by the assessee before the CIT(Appeals), it transpires that the failure on his part to participate in the assessment proceedings was for the reason that the notice(s) intimating the fixation of the matter were dropped by the A.O at his old email id i.e. vnonhare@gmail.com which was no more in use, and thus, for the said reason he had remained oblivion about the ongoing assessment proceedings. I find substance in the contention of the Ld. AR that for the aforesaid reasons he had remained

oblivion of the ongoing assessment proceedings as well as framing of the assessment vide an ex-parte order u/s. 144 of the Act, dated 28.11.2019.

12. Apropos the observation of the CIT(Appeals) qua the delay of 1316 days involved in the filing of the appeal by the assessee, I find that as observed by him, and rightly so, the exercise of discretion for condoning the delay must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. In my view, the explanation which was advanced by the assessee before the CIT(Appeals) explaining the delay of 1316 days does not smack of any lackadaisical conduct or malafide intention on his part, but is a result of a bonafide omission/mistake on his part which had resulted to the impugned delay. I am of a firm conviction that the CIT(Appeals) considering the fact that the assessee is a retired government employee, aged 60 years, ought to have taken a liberal view and condoned the delay involved in filing of the appeal before him. As there is a justifiable explanation before me as to why the assessee had failed to participate in the assessment proceedings, and also, had remained unaware about the assessment order, therefore, I am unable to persuade myself to subscribe to the view taken by the CIT(Appeals) who had declined to condone the same. My aforesaid conviction that a justice oriented and liberal approach should be taken while considering the issue of condonation of the delay involved in filing of an appeal is fortified by the judgement of the **Hon'ble**

Supreme Court in the case of **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025**, wherein the Hon'ble Apex Court had observed that justice oriented and liberal approach ought to have been adopted while considering the aspect of condoning the delay involved in filing of the appeal.

13. Accordingly, I herein set-aside the order of the CIT(Appeals) and condone the delay of 1316 days involved in filing of the appeal before him, and restore the matter to his file with a direction to re-adjudicate the same qua the merits of the case. Needless to say, the CIT(Appeals) in the course of the set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidence, if any.

14. As I have restored the matter to the file of the CIT(Appeals) for fresh adjudication, therefore, I refrain from advertng to the merits of the case which, thus, are left open.

15. In the result, appeal filed by the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 19th day of February, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 19th February, 2025.

***SB, Sr. PS.

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.