

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.294/Nag./2024**

(Assessment Year : 2017-18)

Amol Babanrav Kolakar  
Math Mohalla, Mangrulpir 444 403  
Dist. Washim (Maharashtra)  
PAN – BSSPK3205N

..... Appellant

v/s

Addl./Jt./Dy./Asstt./ITO  
National Faceless Appeal Centre  
Delhi / Income Tax Officer, Ward-2, Akola

..... Respondent

Assessee by : Shri Rachit Thakkar  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/02/2025

Date of Order – 25/02/2025

**ORDER**

This appeal by the assessee is against the impugned order dated 18/12/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2017-18.

2. The assessee has raised following grounds:-

*"1] Learned CIT(A) erred in dismissing Assessee's Appeal on the ground that the Appeal is late by 59 days and Assessee has not file the condonation of delay application.*

*2] Learned A.O. erred in adding amounting to Rs.10,96,050/- as unexplained cash credit and added the said income u/s.68 r.w.s. 115BBF of I.T.Act, 1961.*

3] Learned CIT(A) erred in dismissing the Assessee's Appeal without considering facts of case and merely rely on A.O.'s order.

4] The Appellant is a un-educated person and he has not well aware of the tax law, all the notices issued by the I.T. Department has been served to accountant, who has filed his I.T. Return and they have not inform the Assessee for any notice/any order served by the Department.

5] The Appellant has know about all this fact only on recovered notice issued by the A.O.

6] The Assessee has crave to urge additional ground at the time of hearing."

2. During the course of hearing, the Registry has pointed out a delay of 87 days in filing the present appeal before the Tribunal. While going through the record available before us, I find that the assessee has filed application dated 13/05/2024, seeking condonation of delay which is supported by Affidavit duly sworn. The contents of the application seeking condonation are as under:-

*"The above referred Appellant's order passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi on 18.12.2023. The same Appeal is filed on or before 17.02.2024 but the same is filed today 13.05.2024. Hence, the Appeal is late by 86 days.*

*The Appellant has doing the business for recharge of mobile. He authorized dealer of Ideal Cellular Mobile Service and the has customer has came to their shop for the recharging the mobile and paid the cash as per charging of mobile. The Assessee has doing this business earlier to this year also and as per practice the customer has charge his mobile and paid the cash and the Assessee has deposited the said cash in his two bank a/cs. (Vidarbha Konkan Gramin Bank) and paid the Idea Cellular Company through banking channel after deducting his commission. The Commission income shown by the Appellant in his L.T. Return.*

*The Appellant is a uneducated person and he has not aware of I.T. Return and other legal work. He has solely depend on his part time accountant Mr. Baheti. The said accountant has doing all the work on behalf of the Appellant, even Appellant has don't know whose email address and password in I.T. Return/Portal.*

*The Appellant has know about the Order passed by the A.O. then order passed by CIT(A), NFAC, Delhi only on recovery notice has received from A.O. (ITO Ward-2), Akola through some I.T. people only on that time Appellant has know about all this development and order passed by the A.O. & CIT(A). The*

*Appellant has immediately approached his accountant on 20.04.2024 but he has not cooperate the Appellant and even he has not given the email address and password to Appellant and not given all the documents and other papers/order in his possession to the Appellant. The Appellant has taken all papers/orders from ITO Office and approach the other counsel Mr. Ashish Patel and explained the case. The Counsel has advice him to file the Appeal immediately along with the Condonation of Delay Application.*

*The Appellant and Counsel both has approached the Senior Counsel at Nagpur for filing the Appeal.*

*The Counsel has immediately prepare the Appeal along with Condonation of Delay Application and filed the same today .05.2024.*

*The delay of filing of Appeal is due to bonafide believe out of control of the Appellant due to his unawareness of law and negligence of accountant.*

*Hence, the delay of 86 days may kindly be condone and Appeal will be decided on merit of the case and documents filed by Appellant.*

*There is no prejudice to the department if the Appeal will be decide on merits."*

3. After considering the submissions of the learned Authorised Representative and averments made in the application for condonation of delay, I am of the opinion that the assessee is prevented in filing the appeal belatedly and I am satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, I condone the delay of 87 days in filing the present appeal and admit the same for adjudication on merit.]

4. While going through the impugned order passed by the learned CIT(A), I find that the learned CIT(A), during the first appellate proceedings, ample opportunities were conferred on the assessee, but the assessee chose not to respond to the notices issued on 25/10/2022, 25/08/2023, 06/11/2023 and 05/12/2023, which proves the lackadaisical approach of the assessee. It is more surprising to note that the assessee even filed the appeal before the first appellate authority belatedly and filing of appeal is delayed by 59 days.

The assessee even not bothered to file application seeking condonation supported by required Affidavit duly sworn. Resultantly, the impugned order passed by the learned CIT(A) is an ex-parte order. Under these circumstances, I am of the opinion that by following the principles of natural justice, one opportunity should be given to the assessee to substantiate the case before the learned CIT(A). In view of the above, the ex-parte order passed by the learned CIT(A) is hereby set aside and remit the matter back to the file of the learned CIT(A) and direct him to adjudicate the matter afresh on merit and in accordance with law after providing reasonable opportunity of being heard to the assessee. It is also directed that the assessee should not seek adjournment without there being a justified reason. The assessee is also directed to file before the learned CIT(A) an application for condonation of delay duly supported by a sworn Affidavit on the basis of which the learned CIT(A) is left on his own discretion to decide the condonation application on merits and then proceed to adjudicate the appeal on merit, if so deem fit keeping in view the facts and circumstances of the case. Accordingly, all the grounds raised by the assessee in this appeal are allowed for statistical purposes.

5. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/02/2025

**NAGPUR, DATED: 25/02/2025**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur