

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.22/RPR/2025

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Om Parshvanath Developers Private Limited
Nadi Road, Ganjpara,
Durg (C.G.)-491 001
PAN: AAMCS7665N

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.03.2025

घोषणा की तारीख / Date of Pronouncement : 04.03.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 18.11.2024 for the assessment year 2013-14 as per the following grounds of appeal on record:

“1. Ld. CIT(A) erred in dismissing the appeal observing that the appeal filed by appellant was delayed by 67 days without appreciating the facts of the case properly, holding that delay is not liable to be condoned. Order passed by Ld. CIT(A) is erroneous and illegal.

2. Ld. CIT(A) erred in confirming addition of Rs. 24,72,500/- made by AO on account of share capital received by the appellant treating it to be unexplained cash credit u/s.68. The addition made by AO and confirmed by Ld. CIT(A) is arbitrary, baseless and not justified.”

2. The brief facts in this case are that the assessee company which is engaged in the business of construction/Development of residential apartments had e-filed its return of income on 02.09.2014, declaring total income at Rs.Nil. The case of the assessee company was selected for scrutiny under CASS.

3. The assessment was completed by the Assessing Officer vide his order passed u/s.143(3) of the Act, dated 09.03.2016 wherein, after making an addition of Rs.24,72,500/- u/s. 68 of the Act as unexplained cash credit, income of the assessee was determined at Rs.24,62,270/-.

4. On appeal before the first appellate authority, the CIT(Appeals)/NFAC dismissed the appeal in limine on the ground of limitation of the assessee company and upheld the addition of Rs.24,72,500/-.

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

6. At the outset, the Ld. Counsel for the assessee submitted that the CIT(Appeals)/NFAC had dismissed the appeal of the assessee in limine on the ground of limitation having stated that the appeal was time barred by 67 days. In this regard, the Ld. Counsel for the assessee submitted that there is no delay in fact in filing of the appeal before the CIT(Appeals)/NFAC. The assessment order was passed on 09.03.2016 which was received by the assessee company on 28.03.2016. From 1st March, 2016 for some of the assessee, it was mandatory to e-file its appeal before the CIT(Appeals)/NFAC and the assessee company was falling in that category. It was further submitted by the Ld. Counsel that the CIT(Appeals) had considered the delay from the date of passing of the assessment order i.e. 09.03.2016. In fact, as the assessee company had received the assessment order as per its service order i.e. on 28.03.2016, therefore, the period of 30 days counting from the date of receipt of the order of assessment would end on 27.04.2016. The Ld. Counsel for the

assessee company submitted that the assessee company had manually filed the appeal on 26.04.2016 and therefore, there is no delay in filing of the appeal. However, thereafter, the assessee company e-filed its appeal on 14th June, 2016. The subsequent e-filing of the appeal on 14th June, 2016 was as per the mandatory requirement to e-file such appeal as the assessee company was falling in that category as per the CBDT Circular No.20/2016, dated 26th May, 2016, wherein the date of e-filing was extended to 15th June, 2016, therefore, the manual filing of the appeal is concerned, there is no delay and even the e-filing of the appeal is concerned, it has been filed as per time limit extended by the aforesaid CBDT Circular (supra). These facts were not considered by the CIT(Appeals)/NFAC.

7. Per contra, the Ld. Departmental Representative (for short 'DR') referring to Para 3.2 of the CIT(Appeals)'s order submitted that as observed by the CIT(Appeals) there was no explanation furnished by the assessee company as regards the impugned delay and it is only for the first time before the Tribunal such explanation was furnished.

8. I have carefully considered the facts involved in the present case, submissions of both the parties and the issue of limitation involved therein. That even without going into the merits of the case, the CIT(Appeals) had dismissed the appeal in limine on the ground of

limitation. However, it was submitted by the Ld. Counsel that the assessee company had not filed the present appeal before the CIT(Appeals) belatedly. The CIT(Appeals) has considered the delay of filing of the appeal from the date of passing of the assessment order, whereas, it should have been considered from the receipt of the said order i.e. the date on which the assessee company was in receipt of the assessment order. Considering this date i.e. 28.03.2016, the period of limitation goes upto 27.04.2016 and the assessee company has manually submitted the appeal on 26.04.2016. The assessee company has also e-filed its appeal on 14th June, 2016 since it was in the category where they have to e-file the appeal mandatorily. That as per the above referred CBDT Circular No. Circular No.20/2016, dated 26th May, 2016, the date of e-filing was extended to 15th June, 2016, therefore, the manual filing of the appeal is concerned, there is no delay and even if the e-filing of the appeal is concerned, again there is also no delay in filing of the same and the law of limitation is complied with.

9. Coming to the submission of the Ld. DR that there has been no explanation from the assessee company as regards the delay, it is observed that since as per the knowledge and wisdom of the assessee company, there was no delay at all, therefore, no such explanation were forwarded before the CIT(Appeals)/NFAC and also, since law of limitation

goes to the root of the matter, it takes the character of a legal issue which goes to the root of the matter and as per the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**, such legal issue can be raised at any appellate stage, therefore, after examining the records as aforesaid, I am of the considered view that there is no delay on the part of the assessee company in filing of the appeal before the first appellate authority and the delay is hereby condoned.

10. Once the delay is condoned, the matter is remanded to the file of the CIT(Appeals)/NFAC for de-novo adjudication as per law while complying with the principles of natural justice. The Ld.CIT(Appeals)/NFAC is directed to pass a speaking order in terms of Sections 250(4) and 250(6) of the Act. Thus, the **Grounds of appeal No.1 & 2** raised by the assessee company are allowed for statistical purposes in terms of the aforesaid observations.

11. In the result, appeal of the assessee company is allowed for statistical purposes.

Order pronounced in open court on 04th day of March, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 04th March, 2025.

SB, Sr. PS

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur