

आयकर अपीलीय अधिकरण  
पटना पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]  
[Virtual Court]

श्री संजय शर्मा, न्यायिक सदस्य  
एवं  
श्री रakesh मिश्रा, लेखा सदस्य  
के समक्ष  
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 439/PAT/2024  
Assessment Year: 2017-18**

Manoj Kumar Yadav	Vs.	Commissioner of Income Tax (Appeals)
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: ADNPY8651R</b>		

**Appearances:**

**Assessee represented by** : Bhagwan Jha, ITP.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : January 30<sup>th</sup>, 2025

Date of pronouncing the order : March 6<sup>th</sup>, 2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the CIT(A)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2017-18 dated 31.01.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 11.12.2019.



1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 60 days. An application seeking condonation of delay has been filed by the assessee stating as follows:

*"I, Manoj Kumar Yadav, the appellant in the above-mentioned appeal, hereby acknowledge receipt of your notice dated 16-2074 regarding defects in the appeal filed against the order/orders of the Appellate Assistant Commissioner/C.I.T.(A) dated 16.07.2024, pertaining to Assessment Year 2017-18.*

*I have duly noted the following defects pointed out in the appeal:*

*1. The appeal is time-barred by 60 days, and condonation of delay has not been filed. The reasons for delay are as follows:*

*a. Medical Grounds: During the period immediately preceding the due date for filing the appeal, there were severe medical emergencies in my family, requiring extended hospitalization and subsequent recuperation, which significantly impeded my ability to attend to routine matters, including the filing of the appeal.*

*b. Family Marriage: Additionally, there was a family marriage ceremony during the same period, necessitating my presence and involvement in arrangements, further diverting attention from statutory compliance deadlines.*

*I rely on the decision of the Hon'ble Supreme Court in the case of CIT vs. Suresh N. Gupta (2015) where it was held that genuine reasons such as medical emergencies and family obligations constitute valid grounds for condonation of delay in filing appeals.*

*2. Form No. 35 has not been filed. However, I wish to clarify that Form No. 35 has already been filed, and a copy thereof is enclosed herewith for your reference.*

*I sincerely regret the oversight and assure you that necessary rectifications have been made promptly to comply with the requirements. I request your kind consideration for condonation of delay based on the valid reasons cited above.*

*I kindly request confirmation of receipt of the enclosed Form No. 35 and an extension of time to rectify any remaining procedural requirements within the stipulated period of ten days, as advised.*

*I would also like to bring to your notice that this reply is submitted without prejudice to the question of limitation, which I understand will be decided*



*by the Bench at the time of the hearing of the appeal. I am fully aware of the just exceptions that may be taken by the Bench or the Respondent in this regard.”*

1.2. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

- “1. For that the grounds of appeal hereto are without prejudice to each other.*
- 2. For that in the facts and circumstances of the case the learned CIT(A) has erred in calculation of assessed income without considering the facts of case.*
- 3. For that the assessee has neither concealed the particulars of income nor furnished inaccurate particulars thereof. As a matter of fact the return has been filed on the basis of books of a/c kept in regular course of business duly audited.*
- 4. For that in the course of assessment proceedings the assessee has filed audited account in course of assessment proceeding in support of return filed which has not been disbelieved by the Assessing Officer. The other papers and documents as filed in course of assessment proceeding has also not been disbelieved by the Assessing Officer.*
- 5. For that there is no guilt alleged to have been committed.*
- 6. For that the income of Rs. 4,56,610/- is disclosed in the return of income. At no stretch of imagination the amount of Rs. 10,00,000/- can constitute the concealed income.*
- 7. That in view of the above it is respectfully submitted that the assessed amount as sustained by the learned CIT(A) is arbitrary, unjustified, void ab-initio and bad in law.*
- 8. For that the appellant reserves his right to file detailed submission at the time of hearing.*



9. For that the appellant craves leave to urge, add or alter any other ground or grounds at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual engaged in the business of grains. The assessee e-filed his return of income on 11.07.2017 showing total income of Rs. 4,56,610/-. The case of the assessee was picked up for complete scrutiny through CASS and statutory notices u/s 143(2) and 142(1) of the Act along with questionnaire were issued and duly served upon the assessee but the notices were not complied with. On further issuance of show cause notice, the assessee replied on 10.12.2019 and also produced books of account and vouchers for sale. On verification of the details furnished by the assessee, the Ld. AO found that a sum of Rs. 8,00,000/- was deposited in old currency notes on 10.11.2016 which was found to be satisfactorily explained but on 14.11.2016, another sum of Rs. 10,00,000/- was deposited in the bank account which according to the Ld. AO was not explained satisfactorily and correctness of cash book was doubtful. Hence, the Ld. AO rejected the books of account of the assessee u/s 145(3) of the Act and treating the cash deposit of Rs. 10,00,000/- as unexplained money, added the same to the total income of the assessee u/s 69A of the Act. The Ld. AO assessed the total income of the assessee at Rs. 14,56,610/- under section 143(3) of the Act but while concluding the assessment order, the section is mentioned as 144 of the Act. Thereafter, penalty proceeding u/s 271AAC of the Act was initiated separately for addition of Rs. 10,00,000/- for not maintaining true books of account. Aggrieved with the assessment order the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee after observing as follows:



“5.1. I have carefully gone through the contentions made by the appellant as well as the A.O. As observed, the appellant had deposited a total cash of Rs. 10,00,000/- in his Bank a/c. Along with this, the appellant also earned Rs. 5,58,418/- as shown in the ITR. Thus, the total taxable income of the appellant is Rs. 14,56,610/-.

6. During the proceedings, the appellant has not been able to file any concrete reasons or explanation as to why the A.O.'s action was unwarranted. As well as, the appellant could not explain the nature and source of cash deposited total amount at Rs. 10,00,000/- in his bank account during the demonetization period, and therefore the same is hereby added in return of income of the assessee and charged to income tax as unexplained money u/s 69A r.w.s. 115BBE trading undisclosed income under the head of other sources of the previous year relevant to the AY 2017-18.

7. Decision is being given on merits; as the result of the condonation of delay filed by the appellant: "For the substantial interest of justice, we condone the delay". The total addition/demand made by the A.O. of Rs. 10,38,468/- is upheld. All the grounds of the appellant are quashed, and the appellant's appeal is dismissed.

8. For statistical purposes, the appeal is Dismissed.”

4. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before this Tribunal.

5. Rival contentions were heard and the record and the submissions made have been examined. It was submitted before us that during the demonetisation period, the money which had been advanced or was in the circulation of business had been returned and was deposited in the bank account. The assessee carries on the business of potatoes and onions (mentioned as grains and sugar items before the Ld. CIT(A)) and as no proper representation could be made before the Ld. CIT(A), it was requested to set-aside the matter to the Ld. CIT(A) so that proper representation could be made by the assessee before him.

6. We find that at both the stages of assessment before the Ld. AO as well as in appeal before the Ld. CIT(A), proper representation was not



made on behalf of the assessee. While the assessment order has been made under section 144 to the best of judgement, the appeal has also been decided *ex parte*, primarily on account of non-prosecution on behalf of the assessee by the Ld. AR. Therefore, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him to be decided afresh, who shall allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereby pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

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

**Order pronounced in the open Court on 6<sup>th</sup> March, 2025.**

Sd/-

**[Sonjoy Sarma]**  
Judicial Member

Sd/-

**[Rakesh Mishra]**  
Accountant Member

Dated: 06.03.2025

*Bidhan (P.S.)*



*Copy of the order forwarded to:*

1. **Manoj Kumar Yadav, Goriya Toli, Chaurahatti, Siwan, Bihar, 841226.**
2. **Commissioner of Income Tax (Appeals).**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata