

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 140/RPR/2025

(निर्धारण वर्ष Assessment Year: 2014-15)

Rakesh Kumar, Ward No.36, Jagir Chowk, New Khursipar, Bhilai, Dist: Durg, 494001, C.G.	V s	Income Tax Officer, Ward-2(1), Aaykar Bhawan, Civic Centre, Bhilai, 490006 (NFAC)
PAN: BTPK4928E		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	24.04.2025
घोषणा की तारीख /Date of Pronouncement	:	24.04.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee, directed against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 06.01.2025, for the Assessment Year 2014-15, which in turn arises from the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 26.03.2022 passed by Income Tax Officer, National Faceless Assessment Centre, Delhi, (in short "Ld. AR").

- 2.** The grounds of appeal raised by the assessee are as under:
1. *In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) NFAC has erred in dismissing the appeal on the ground of delay without giving opportunity to appellant before dismissing the appeal by invoking provisions of section 249(3) of the Income-tax Act, 1961.*
 2. *In the facts and circumstances of the case, the Id. CIT(Appeals) has erred in not condoning the delay and also erred in not appreciating that the appellant is a vegetable vendor and the assessment order was passed ex-parte.*
 3. *In the facts and circumstances of the case, the Id. CIT(Appeals) has erred in upholding the action of learned Assessing Officer making addition of Rs.1,62,58,110/-.*
 4. *The impugned order is bad in law and on facts.*
 5. *The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.*
- 3.** Brief facts of the case are that the assessee is engaged in the Wholesale trading of vegetable at Supela, Bhilai. Return of Income for AY 2014-15 was filed by the assessee on 09.10.2014, declaring total income of Rs.2,49,520/-. The case of the assessee is reopened u/s 147, being total credit in his ICICI Bank accounts no. 018605500457 and 1815550142 during the period from 26.09.2013 to 17.03.2014 are of Rs.1.61 Crores. However, the assessee had not filed any Income Tax Return in compliance to the notice u/s 148. Accordingly, best judgment assessment u/s 144 was carried out by the Ld. AO, and in absence of any explanation or compliance by the assessee an addition of Rs. 1,62,58,110/- was made, treating the

deposits in assessee's aforesaid bank account as unexplained income of falling within the meaning of Section 69A of the Act.

4. Aggrieved with the aforesaid addition by the Ld. AO through the impugned assessment order, assessee preferred an appeal before the Ld. CIT(A), however, the appeal of assessee is dismissed on account of delay of 346 days in filing of appeal, by rejecting the request for condonation of delay of the assessee by the First Appellate Authority.

5. At the outset, it is observed that an application seeking adjournment of the case for 1 week is submitted before us, however, since, the dismissal of assessee's appeal by the Ld. CIT(A) was on account of delay in filing of appeal and rejection of request for condonation of delay, which in terms of settled principle of law was to be decided on merits after considering the facts on record. Under such circumstances, although there is no representation on behalf of the assessee, we found it appropriate to take up the matter for adjudication on the basis of synopsis placed on record, which for the sake of completeness of facts is culled out as under:

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23 APR 2025
Tax Appellate Tribunal**BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH: RAIPUR (C.G.)**

Name of the Appellant	Shri Rakesh Kumar
PAN/Status/Assessment Year	BBTPK4928E/Indl./2014-15
I.T. Appeal No.	140/RPR/2025

SYNOPSIS

1. The appellant is engaged in wholesale trading of vegetables at Supela, Bhilai. Return of income was filed on 09/10/2014 u/s.139 of the Income-tax Act, 1961 declaring total income at Rs.2,49,520/- wherein net profit from said business was declared at Rs.3,55,647/-.
2. The re-assessment proceedings were initiated for reasons of variation in receipts credited in the bank accounts vis-à-vis declared in the ITR. Notice u/s.148 of the Act was issued by Ld. ITO, Ward-2(1), Bhilai on 31/03/2021.
3. Thereafter, the case was transferred to National Faceless Assessment Centre. The appellant was not aware about the assessment proceedings going on his case as all the notices were sent on the e-mail id **sajidpasha.2009@gmail.com** which belongs to his former counsel, Shri Sajid Pasha, who was looking after Income tax compliances at the relevant point of time.
4. Shri Sajid Pasha did not make any compliances to notices during assessment proceedings nor did he inform about the same to the appellant.
5. Resultantly, assessment was culminated ex-parte by NFAC on 26/03/2022 u/s.147 r.w.s. 144 r.w.s 144B of the Act assessing total income at Rs.1,65,07,630/- after making addition of entire credits including cash deposits made into the bank accounts of Rs.1,62,58,110/- as unexplained income u/s.69A of the Act.
6. The appellant came to know about the passing of the assessment order when he received penalty orders passed by Ld. ITO, Ward-2(1), Bhilai sent through post in September 2022.
7. Immediately, after receipt of the orders, appellant reached out to Shri Pasha for knowing fact of the matter. Even after passage of several months Shri Pasha did not give any

- satisfactory response and appellant was compelled to look for another counsel. Thereafter he contacted CA Shri Arvind Chand Surana for his assistance in taking appropriate course of action.
8. CA Shri Surana accepted the assignment and suggested to file appeal before the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre against all the orders. CA Shri Surana was undergoing treatment following a bypass surgery as documented in the clinical impression dated 04/05/2022 by Asian Heart Institute & Research Centre (P) Ltd., Mumbai. Subsequently, he also suffered from severe neck pain in October' 2022.
 9. Appeal was filed on 17/04/2023 against the assessment order along with application of condonation of delay.
 10. Written Submission was filed before the Ld. CIT (Appeals) on 14/09/2024 inter-alia explaining the reasons of delay in filing of appeal but Ld. CIT (Appeals) rejected the request for condonation of 346 days vide order dated 06/01/2025.
 11. The appellant was prevented by sufficient cause which led to delay in filing of appeal. In this regard, appellant relies on the following pronouncements:
 - a) Vidya Shanker Jaiswal Vs. ITO, Ward-2, Ambikapur (Civil Appeal No.____/2025) [Special Leave Petition (Civil) Nos. 26310-26311/2024] dated 31/01/2025.
 - b) Pradeep Kumar Khandelwal, Raipur vs. Income-tax Officer-1(1), Raipur (Tax Case No.166/2024) Chhattisgarh High Court dated 04/02/2025.
 12. On the basis of above submissions, it is humbly prayed that the Hon'ble Tribunal may be pleased to re-store the matter back to Ld. CIT (Appeals) for deciding on merits in the interest of justice.



(CA Yogesh Sethia)
Counsel for the appellant

6. Being the matter is taken up for hearing, Ld. CIT-DR on behalf of the revenue have reiterated the facts of the case. At the very initiation of the arguments, it is submitted that the appeal of the assessee was defective before the First Appellate Authority, wherein the assessee was unable to

substantiate the sufficiency of reasons for delay to be beyond the control of the assessee to the satisfaction of First Appellate Authority and, therefore, the appeal of the assessee is dismissed on account of delay in filing of the appeal itself. The observations of Ld. CIT(A) are as under:

4.3 In the present case, there was a delay of 346 days in filing the appeal with the reason that the appellant was not well versed with computer and income tax matters and hence engaged a counsel, Mr. Sajid Pasha. The said counsel engaged by the appellant did not inform the appellant regarding the communications received from the department through e-mail and hence there was no response from the appellant during the assessment and penalty proceedings. The appellant further submitted that it was only when the appellant received the copies of the assessment order and penalty orders through postal service on 31/08/2022 and 30/09/2022 that the appellant came to know that the outcome of the returns filed by him was adverse.

Being a modestly educated person, the appellant unable to understand context of these communications and therefore, he immediately contacted the said Mr. Sajid Pasha. Having evasive replies from him, the appellant took resort of engaging a new counsel, Shri Arvind Chand Surana.

4.3.1 In this regard, it is evident and the appellant had also submitted that he had received the copies of the assessment order and penalty orders through postal service on 31/08/2022 and 30/09/2022. But the present appeal is filed on 17.04.2023 i.e., after lapse of more than 7 months. The delay in filing the appeal upto 30.09.2022 may be condoned with the reason of failure on the part of the counsel. But with regard to the further delay, I hold that this delay would have been avoidable, if the appellant was more diligent. The appellant needs to provide a genuine and valid reason for the delay in filing

the appeal. This could be due to circumstances beyond the control of appellant, such as illness and natural disasters. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence on its part. An application of condonation should not be acceptable unless and until the applicant satisfies the authority that he was prevented by a sufficient cause while doing so. Further, longer delays may require more compelling reasons and evidence to be condoned. The reasons mentioned by the appellant do not suffice the delay to be condoned.

7. Based on aforesaid observation of Ld. CIT(A), it was the submission by revenue that the assessee was unable to substantiate the reasons for delay in filing of appeal, therefore, Ld. CIT(A) has rightly dismissed the appeal, the impugned order of Ld. CIT(A), thus, deserves to be upheld.

8. We have considered the synopsis submitted by the assessee and the submissions on behalf of the revenue. In this matter, although, an application for adjournment was furnished by the assessee on behalf of the counsel to adjourn the matter in next week, however, as in the present matter, the issue emanating from the Ld. CIT(A), regarding dismissal of the appeal on account of delay in filing of the appeal without adverting to the merits of the case, found to be not justified, being, the delay of 346 days has been explained by the assessee, therefore, the matter is taken up for hearing.

9. On perusal of synopsis, submitted by the Ld. AR on behalf of the assessee, it is found that the delay in filing of appeal was occasioned on account of non-cooperative conduct by the counsel of the assessee, and, thereafter, new counsel engaged by the assessee was also unfortunately undergone with treatment following a bypass surgery and with other medical issues, therefore, the assessee being not competent to handle the tax matter himself was unable to comply in time and could have filed the appeal before the Ld. CIT(A) only with the delay of 346 days. On this issue, in the interest of justice, the judgment of Hon'ble High Court in the case of **Vidya Shankar Jaiswal Vs. the Income Tax Officer, Ward-2, Ambikapur, Tax Case No. 86 of 2024, dated 12.04.2024**, and **M/s BPS Infrastructure Vs. ITO, Ward-1(3), Raipur, Tax Case No. 87 of 2024, dated 12.04.2024**, is relevant wherein the Hon'ble Apex Court has laid down as under:

3. *An appeal was preferred by the appellant before the Income Tax Appellate Tribunal, Raipur Bench, wherein there was a delay of 166 days. The Tribunal declined to condone the delay. An appeal was preferred against the said order by the appellant before the High Court and has been dismissed. Even the appeal*
4. *In our view, both the Tribunal and the High Court ought to have adopted a justice-oriented and liberal approach by condoning the delay of 166 days.*

10. In view of the aforesaid principle laid down by Hon'ble Apex Court, we are of the considered view that the delay in filing of appeal before the Ld. CIT(A) for 346 days deserves to be condoned and the matter should be adjudicated afresh based on merits of the case and facts available on record.

11. Our aforesaid view is duly supported by the Judgment of Hon'ble Mumbai High Court in the case of **CIT vs. Premkumar Arjundas Luthra (HUF) reported in [2016] 240 taxman 133**, wherein Hon'ble Bombay High Court has held as under:

“.....It is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(l)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it dear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the

CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(l)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

12. In view of aforesaid observations of the Hon'ble Bombay High Court, in absence of deliberation on merits by the Ld. CIT(A) based on material available on record, in the interest of justice, as we have directed to condone the delay of 346 days in filing of appeal by the assessee before the First Appellate Authority, the matter is remanded back to Ld. CIT(A) for fresh adjudication on merits.

13. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings.

14. In result, appeal of the assessee in **ITA No. 140/RPR/2025** is **allowed** for statistical purposes.

Order pronounced in the open court on 24/04/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 24/04/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Rakesh Kumar
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Bhilai
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

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