

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.166/RPR/2025
निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Gulzar-Moksh (JV)
Gulzar Niwas, Geedam Road,
Jagdalpur (C.G)-494 001
PAN: AANFG4916A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Jagdalpur (C.G)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 07.05.2025

घोषणा की तारीख / Date of Pronouncement : 08.05.2025

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 06.01.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, it is noticed that the Ld. CIT(Appeals)/NFAC dismissed the appeal in limine on the ground of delay of 160 days in filing the appeal before him. Though the Ld. CIT(Appeals)/NFAC had discussed the facts of the case in its order which is definitely not in terms with Section 250(4) and (6) of the Income Tax Act, 1961 (for short 'the Act'). In this regard, it is also noted that reasons that had been spelled out by the assessee before the Ld. CIT(Appeals)/NFAC is that the concerned partner of the assessee who was looking into the Income Tax matters was keeping unwell, for which reason the said delay had occurred. The assessee had also provided medical certificates explaining the validity of the said reasons. However, for reasons best known to the Ld. CIT(Appeals)/NFAC had chosen not to condone the delay and had dismissed the appeal in limine. The Ld. CIT(Appeals)/NFAC has not dealt with the merits of the matter and as per material available on record i.e. assessment order, statement of facts and grounds of appeal and had dismissed the appeal in limine without condoning the delay. He has simply upheld the assessment

order without following the mandate of Section 250(4) and (6) of the Act. The Ld.CIT(Appeals)/NFAC had summarily dismissed the appeal without any reasoning on facts nor had conducted any enquiry.

3. In so far the delay is concerned, we may take guidance from the judgment 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**, had observed that a justice oriented and liberal approach ought to be adopted while considering the aspect of condoning the delay involved in filing of the appeal. Also, the **Hon'ble High Court of Chhattisgarh** in the case of **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025**, after relying on the judgment of the Hon'ble Supreme Court in the case of Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur (supra) had held that a justice oriented and liberal approach be adopted while considering the application filed by the assessee for condonation of delay.

4. That in the recent judgment of the **Hon'ble Supreme Court** in the case of **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025**, the Hon'ble Apex Court while interpreting Section 5 of

the Limitation Act, 1963 regarding the condonation of delay in respect of case of land acquisition has observed and held on the aspect of delay that although the delay cannot be condoned without sufficient cause, the merits of the case could not be discarded solely on the ground of delay. A liberal approach, therefore, should be taken in condoning the delay when limitation ground undermines the merits of the case and obstructs the substantial justice. In other words, the objective of the court should be to deliver substantial justice coupled with liberal and judicious approach while deciding the issue of limitation and whenever it is found that the case has merits which needs to be addressed substantially, in such case, the delay should be condoned.

5. On a perusal of the order of the Ld.CIT(Appeals)/NFAC, it is observed that the Ld.CIT(Appeals)/NFAC dismissed the appeal of the assessee in limine without dealing with the merits of the case. In our considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on its part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of delay. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals)/NFAC remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the

CIT(Appeals) is not vested with any power to summarily dismiss the appeal in limine without adverting to the merits of the case. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, 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 AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 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. Sec. 251(1)(a) and (h) 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-s. (2) of [s. 251](#) of the Act also makes it clear 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 [s. 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 w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO 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 [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 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.”

6. Considering the totality of the facts and circumstances, we condone the delay since there is no malafide conduct on the part of the assessee regarding the delay caused and set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication on merits while complying with the principles of natural justice. At the same time, it is directed that this being the final opportunity, the assessee shall comply with all hearing notices issued by the Ld. CIT(Appeals)/NFAC. The Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

7. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 8th May, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 8th May, 2025.

***SB, Sr. PS

आदेश की प्रतिलिपि अग्रहित / 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.