

आयकर अपीलीय अधिकरण, कोलकाता पीठ "डी", कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos.497 & 498/Kol/2025
Assessment Years: 2006-07 & 2007-08

Xponse Technologies Limited (PAN: AAACX 0215 B)	Vs.	ITO, Ward-2(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	20.05.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.05.2025
For the assessee / निर्धारिती की ओर से	Shri Manoj Kataruka, A.R
For the revenue / राजस्व की ओर से	Shri S. B. Chakaraborty, Sr. D.R

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

Both the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 15.01.2025 & 10.01.2025 for AY 2006-07 & 2007-08 respectively.

In both the appeals, issues are common as submitted by the counsel, hence taken up together for disposal.

2. Before going into the brief of the case of the assessee, it is important to mention here that the submission of the Ld. A.R is only to this effect that the assessee has to give an opportunity to place its case before the AO as the order passed by the AO confirmed by the Ld. CIT(A) without hearing the assessee. The Ld. A.R submitted before us that in both the cases, the assessment order was passed ex-parte when there was non-compliance on behalf of the assessee and when the assessee preferred an appeal before the Ld. CIT(A), the Ld. CIT(A) has dismissed the appeal of the assessee on the ground of delay, so there was no adjudication on the merit of the case before the AO.

3. The Ld. D.R though supports the impugned order but did not raise any objection in remitting the appeal of the assessee before the AO for fresh adjudication.

4. Upon hearing the submission of the counsel of the respective parties, we have perused the records and find that brief facts of the case of the assessee as it appears from the ITA No. 497/Kol/2025 is that the assessee company was engaged in the business of export of software development services and IT enabled serviced. No return filed by the assessee company u/s 139(1) of the Act as the assessee company, 100% export range unit during registered with Software Technology Park Company were eligible for claiming deduction u/s 10A/10B of the Act, 1961. A notice u/s 148 was issued, there was no compliance to the said notice, since the assessee did not comply to the notice u/s 148. The AO has assessed the income of the assessee at Rs. 11,39,91,406/-. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed as there was a delay of 214 days. The Ld. A.R has submitted the reasons before the Ld. CIT(A) regarding the delay which is as follows:

“The assessee company applicant is filing its appeal u/s 246 A of the Income Tax Act, 1961 against the order of the AO passed u/s 144/147 of the Act relating to AY 2007-08. The assessee obtained certified copy of the assessment order dated 31.03.2014 on 06.07.2016 along with the demand order. The assessment order and demand notice for the AY 2007-08 was not served since int eh month of February, 2007 a search and seizure was conducted by NCB at the business premises, being the registered office of the company wherein various documents were seized and the office was sealed. All the operation and business activities were suspended. Since

all the documents were seized that prevented us from complying with the procedure of assessment. On information received from the AR, the company applied for certified copy and upon receipt of the same, the assessee filed appeal."

But the Ld. CIT(A) did not consider the submission of the assessee regarding the delay and dismiss the appeal of the assessee on the ground of limitation. In this context, we have perused the several decisions of the Hon'ble Apex Court and find that in *Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575]*, this Court reiterated the following classic statement from *Krishna vs. Chathappan [1890 ILR 13 Mad 269]*:

"... Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

In *N.Balakrishnan v. M.Krishnamurthy [1998 (7) SCC 123]*, this Court held:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice..... Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

5. Keeping in view, that facts that the order passed by the AO is also an ex-parte order and further the Ld. CIT(A) has also not adjudicated the matter on merit rather

dismissed the appeal in limine, hence, for the interest of justice, we are inclined to restore the appeal before the AO for fresh adjudication after setting aside the order passed by both the lower authorities.

In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 22nd May, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 22nd May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Xponse Technologies Limited, DA-118, Sector-1, Salt Lake City, Kolkata - 700064
2. Respondent – ITO, Ward- 2(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata