

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH: PATNA
VIRTUAL HEARING AT KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री संजय अवस्थी, लेखा सदस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Sanjay Awasthi, Accountant Member]

**I.T.A. Nos. 288 & 289/Pat/2024
Assessment Years: 2012-13 & 2013-14**

Neelabh Kumar Jha (PAN: APFPJ 4590 L)	Vs.	ITO, Ward-1(5), Katihar, Bihar
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	15.05.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	26.05.2025
For the assessee / निर्धारिती की ओर से	Sh. D. V. Pathy, Sr. Advocate
For the revenue / राजस्व की ओर से	Sh. Ashwani Kr. Singal. JCIT

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 18.12.2023 & 15.12.2023 for AY 2012-13 & 2013-14 respectively.

Since the issues are common in both the appeals, hence taken up together for disposal. We take ITA NO. 288/PAT/2024 for AY 2012-13 as a lead case.

2. It appears from the report of the registry that the appeal has been filed after a delay of 14 days for this the assessee has filed condonation petition., which are as follows-

Most Respectfully Sheweth-

1. That this is an application for condonation of delay in filing of the present appeal.
2. That the petitioner states that the order in appeal was passed by the learned assessing officer on 18.12.2023 and was served on the 18.12.2023.
3. That the petitioner states that it was obliged to file the appeal within a period of 60 days from the receipt of the order. The same thus was required to be filed by 17.02.2024. Thus, there is a delay of approximately 11 days in the filing of the present appeal.
4. That the petitioner states that after the receipt of the order passed in appeal it provided the same to its counsel. The said counsel due to some preoccupations before the Hon'ble High Court could not prepare the memorandum of appeal in time.

5. That the petitioner submits that after entrusting the counsel with the order in appeal it was under a belief that the appeal be filed. The counsel however, explained that due to certain urgent matters listed before the High Court the appeal could not be drafted. The said counsel immediately thereupon undertook to prepare the memorandum of appeal for filing the same before the Hon'ble Tribunal.
6. That the petitioner states that delay in filing of the present appeal is due to the fault of its counsel. The petitioner states that the same thus occurred due to reasons beyond its control.
7. That the petitioner states that since the delay in filing of the present appeal is due to a reasonable cause the same merit to be condoned.
8. That the petitioner prays that the delay in filing of the present appeal be condoned and the appeal be heard on merits.

It is prayed accordingly,

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee is that the assessee being an individual filed its return of income for AY 2012-13 declaring total income of Rs. 4,26,240/-. It has been gathered that the assessee has a current account with ICICI Bank Ltd. and further found that higher value cash transaction in aforementioned account has been done for a period of 01.09.2011 to 30.01.2012. The enquiry made by Investigation Wing, Bihar, ITO, Ward-1(5), Katihar, a notice u/s 148 was issued and duly served upon the assessee, in response to the assessee filed return of income, subsequently statutory notices and final

particulars along with draft order with a notice u/s 142(1) was issued to the assessee but there was no compliance as a result of which the assessment order was passed thereby assessed the income to the assessee at Rs. 1,93,21,750/-.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

5. The Ld. Counsel appeared on behalf of the assessee instead of arguing into the merit of the case has only prayed that the appeal of the assessee be restored to the file of AO for fresh adjudication as there was non-compliance by the assessee before the AO. The Ld. AR further submits that the cash deposit in the bank account in fact does not belong to the assessee and the AO did not take any efforts to trace out the real beneficiaries. The Ld. A.R further submits that the assessee was a commission agent. The prayer of the Ld. A.R is that the appeal of the assessee be restored to the file of AO for fresh enquiries.

6 The Ld. D.R supports the impugned order.

7. We have perused the order passed by the AO as well as Ld. CIT(A). It admits of no doubt that at the time of assessment there was non-compliance on behalf of the assessee for which AO assessed the income by calculating @ 5% of the deposit on the bank account. Before the Ld. CIT(A), the Ld. A.R submitted written submission and there was a contention that cash deposit in the bank account does not belong to assessee. It is a fact that the assessee was a commission agent and entirety of the deposit was transferred to different bank account through banking channels and a notice be issued to the bank and concerned beneficiary in whose account, moneys were transferred.

8. Keeping in view, the above facts and submission made by the assessee, we are inclined to restore the appeal to the file of AO to pass a afresh order after making proper enquiry to the contention made by the assessee.

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

Order is pronounced in the open court on 26th May, 2025

Sd/-

Sd/-

(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 26th May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Neelabh Kumar Jha, Prabhat Nagar, D. S. College Road, Katihar-854105
2. Respondent – ITO, Ward- 1(5), Katihar, Bihar
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Patna
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1. That this is an application for condonation of delay in filing of the present appeal.
2. That the petitioner states that the order in appeal was passed by the learned assessing officer on 18.12.2023 and was served on the 18.12.2023.
3. That the petitioner states that it was obliged to file the appeal within a period of 60 days from the receipt of the order. The same thus was required to be filed by 17.02.2024. Thus, there is a delay of approximately 11 days in the filing of the present appeal.
4. That the petitioner states that after the receipt of the order passed in appeal it provided the same to its counsel. The said counsel due to some preoccupations before the Hon'ble High Court could not prepare the memorandum of appeal in time.

5. That the petitioner submits that after entrusting the counsel with the order in appeal it was under a belief that the appeal be filed. The counsel however, explained that due to certain urgent matters listed before the High Court the appeal could not be drafted. The said counsel immediately thereupon undertook to prepare the memorandum of appeal for filing the same before the Hon'ble Tribunal.
6. That the petitioner states that delay in filing of the present appeal is due to the fault of its counsel. The petitioner states that the same thus occurred due to reasons beyond its control.
7. That the petitioner states that since the delay in filing of the present appeal is due to a reasonable cause the same merit to be condoned.
8. That the petitioner prays that the delay in filing of the present appeal be condoned and the appeal be heard on merits.

It is prayed accordingly,

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee is that the assessee being an individual filed its return of income for AY 2012-13 declaring total income of Rs. 4,26,240/-. It has been gathered that the assessee has a current account with ICICI Bank Ltd. and further found that higher value cash transaction in aforementioned account has been done for a period of 01.09.2011 to 30.01.2012. The enquiry made by Investigation Wing, Bihar, ITO, Ward-1(5), Katihar, a notice u/s 148 was issued and duly served upon the assessee, in response to the assessee filed return of income, subsequently statutory notices and final

particulars along with draft order with a notice u/s 142(1) was issued to the assessee but there was no compliance as a result of which the assessment order was passed thereby assessed the income to the assessee at Rs. 1,93,21,750/-.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

5. The Ld. Counsel appeared on behalf of the assessee instead of arguing into the merit of the case has only prayed that the appeal of the assessee be restored to the file of AO for fresh adjudication as there was non-compliance by the assessee before the AO. The Ld. AR further submits that the cash deposit in the bank account in fact does not belong to the assessee and the AO did not take any efforts to trace out the real beneficiaries. The Ld. A.R further submits that the assessee was a commission agent. The prayer of the Ld. A.R is that the appeal of the assessee be restored to the file of AO for fresh enquiries.

6 The Ld. D.R supports the impugned order.

7. We have perused the order passed by the AO as well as Ld. CIT(A). It admits of no doubt that at the time of assessment there was non-compliance on behalf of the assessee for which AO assessed the income by calculating @ 5% of the deposit on the bank account. Before the Ld. CIT(A), the Ld. A.R submitted written submission and there was a contention that cash deposit in the bank account does not belong to assessee. It is a fact that the assessee was a commission agent and entirety of the deposit was transferred to different bank account through banking channels and a notice be issued to the bank and concerned beneficiary in whose account, moneys were transferred.

8. Keeping in view, the above facts and submission made by the assessee, we are inclined to restore the appeal to the file of AO to pass a afresh order after making proper enquiry to the contention made by the assessee.

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

Order is pronounced in the open court on 26th May, 2025

Sd/-

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(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 26th May, 2025

SM, Sr. PS

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particulars along with draft order with a notice u/s 142(1) was issued to the assessee but there was no compliance as a result of which the assessment order was passed thereby assessed the income to the assessee at Rs. 1,93,21,750/-.

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6 The Ld. D.R supports the impugned order.

7. We have perused the order passed by the AO as well as Ld. CIT(A). It admits of no doubt that at the time of assessment there was non-compliance on behalf of the assessee for which AO assessed the income by calculating @ 5% of the deposit on the bank account. Before the Ld. CIT(A), the Ld. A.R submitted written submission and there was a contention that cash deposit in the bank account does not belong to assessee. It is a fact that the assessee was a commission agent and entirety of the deposit was transferred to different bank account through banking channels and a notice be issued to the bank and concerned beneficiary in whose account, moneys were transferred.

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For the revenue / राजस्व की ओर से	Sh. Ashwani Kr. Singal. JCIT

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeal)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 18.12.2023 & 15.12.2023 for AY 2012-13 & 2013-14 respectively.

Since the issues are common in both the appeals, hence taken up together for disposal. We take ITA NO. 288/PAT/2024 for AY 2012-13 as a lead case.

2. It appears from the report of the registry that the appeal has been filed after a delay of 14 days for this the assessee has filed condonation petition., which are as follows-

Most Respectfully Sheweth-

1. That this is an application for condonation of delay in filing of the present appeal.
2. That the petitioner states that the order in appeal was passed by the learned assessing officer on 18.12.2023 and was served on the 18.12.2023.
3. That the petitioner states that it was obliged to file the appeal within a period of 60 days from the receipt of the order. The same thus was required to be filed by 17.02.2024. Thus, there is a delay of approximately 11 days in the filing of the present appeal.
4. That the petitioner states that after the receipt of the order passed in appeal it provided the same to its counsel. The said counsel due to some preoccupations before the Hon'ble High Court could not prepare the memorandum of appeal in time.

5. That the petitioner submits that after entrusting the counsel with the order in appeal it was under a belief that the appeal be filed. The counsel however, explained that due to certain urgent matters listed before the High Court the appeal could not be drafted. The said counsel immediately thereupon undertook to prepare the memorandum of appeal for filing the same before the Hon'ble Tribunal.
6. That the petitioner states that delay in filing of the present appeal is due to the fault of its counsel. The petitioner states that the same thus occurred due to reasons beyond its control.
7. That the petitioner states that since the delay in filing of the present appeal is due to a reasonable cause the same merit to be condoned.
8. That the petitioner prays that the delay in filing of the present appeal be condoned and the appeal be heard on merits.

It is prayed accordingly,

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee is that the assessee being an individual filed its return of income for AY 2012-13 declaring total income of Rs. 4,26,240/-. It has been gathered that the assessee has a current account with ICICI Bank Ltd. and further found that higher value cash transaction in aforementioned account has been done for a period of 01.09.2011 to 30.01.2012. The enquiry made by Investigation Wing, Bihar, ITO, Ward-1(5), Katihar, a notice u/s 148 was issued and duly served upon the assessee, in response to the assessee filed return of income, subsequently statutory notices and final

particulars along with draft order with a notice u/s 142(1) was issued to the assessee but there was no compliance as a result of which the assessment order was passed thereby assessed the income to the assessee at Rs. 1,93,21,750/-.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

5. The Ld. Counsel appeared on behalf of the assessee instead of arguing into the merit of the case has only prayed that the appeal of the assessee be restored to the file of AO for fresh adjudication as there was non-compliance by the assessee before the AO. The Ld. AR further submits that the cash deposit in the bank account in fact does not belong to the assessee and the AO did not take any efforts to trace out the real beneficiaries. The Ld. A.R further submits that the assessee was a commission agent. The prayer of the Ld. A.R is that the appeal of the assessee be restored to the file of AO for fresh enquiries.

6 The Ld. D.R supports the impugned order.

7. We have perused the order passed by the AO as well as Ld. CIT(A). It admits of no doubt that at the time of assessment there was non-compliance on behalf of the assessee for which AO assessed the income by calculating @ 5% of the deposit on the bank account. Before the Ld. CIT(A), the Ld. A.R submitted written submission and there was a contention that cash deposit in the bank account does not belong to assessee. It is a fact that the assessee was a commission agent and entirety of the deposit was transferred to different bank account through banking channels and a notice be issued to the bank and concerned beneficiary in whose account, moneys were transferred.

8. Keeping in view, the above facts and submission made by the assessee, we are inclined to restore the appeal to the file of AO to pass a afresh order after making proper enquiry to the contention made by the assessee.

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

Order is pronounced in the open court on 26th May, 2025

Sd/-

Sd/-

(Sanjay Awasthi /संजय अवस्थी)
Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
Judicial Member/न्यायिक सदस्य

Dated: 26th May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Neelabh Kumar Jha, Prabhat Nagar, D. S. College Road, Katihar-854105
2. Respondent – ITO, Ward- 1(5), Katihar, Bihar
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Patna
5. DR, Patna Bench, Patna

True Copy

By Order

Assistant Registrar /Sr. Private Secretary
ITAT, Patna Bench, Patna