

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 65/CTK/2025
Assessment Year: 2019-20

Hemant Kumar Majhi (Appellant)	Vs.	ITO, Jeypore Ward (Respondent)
PAN: BGKPM2163F		

Appearances:

Assessee represented by : N. Anand Rao, CA.
Department represented by : Ashim Kumar Chakraborty, CIT DR.
Date of concluding the hearing : 20-May-2025
Date of pronouncing the order : 29-May-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-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 2019-20 dated 09.08.2024, which has been passed against the assessment order u/s 147 r.w.s. 144 of the Act, dated 27.02.2024.



1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 83 days. An affidavit seeking condonation of delay has been filed by the assessee stating as under:

"I Sri Hemant Kumar Majhi aged about 37 years, S/o Sri Mahadev Majhi Peramanent Resident of Kongra Nabarangpur, PO/PS- Nabarangpur in the District of Nabarangpur do here by solemnly affirm and state as under-That I am the Deponent in this Affidavit and well acquainted with the facts of this Affidavit. That I was suffering from disease hence I could not file the appeal before the income Tax Appellate Tribunal Cuttack on time. That I have obtained the medical certificate from medical officer, Koraput in the district of Koraput. That this Affidavit is required to be produced before the Income Tax Appellate Tribunal Cuttack Bench Cuttack, Odisha in regard to filing of Appeal for assessment year 2019-20

That the facts stated above are true to the best of my knowledge and belief and no part of it is concealed by me."

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

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

"1. That the order of the learned CIT(Appeal) is unjust and not in reference to the facts and circumstances of the case.

2. That the appellant is not maintaining the books of account.

3. That the addition of Rs 9,28,50,000/- is unjust and is in violation of natural justice.

4. That the only source of income is salary received from the Punjab National Bank.

5. That the income is enough to meet my needs and I do not have any Taxable Income. As the account is not in my name how the assessment will be made in my name.



6. That the deposits are made on behalf of PNB by the depositors which are transferred to PNB to their respective account holders and the withdrawals are also in the same manner.

7. That the Assessee's PAN is given only for identity of account and not for the operation of the same.

8. That the learned CIT(Appeal) has not provided adequate opportunity of being heard for submission of the fact.

9. Issue of notice U/s 148 of the Income Tax Act. by the Income Tax Officer, Jeypore is not in pursuance of the Section 151A of the Income Tax Act as decided in the matter of Saswat Kumar Mohapatra Vs. Principal Chief Commissioner of income Tax, Bhubaneswar by Honorable High court of Odisha And by "Hexaware Technologies Ltd. (Bombay HC) and Venus Jewels Vs. Asst. Commissioner Income Tax (2024) 164 Taxmann.com (414) Bombay. Further the above order is confirmed by the Hon. Apex Court in the matter of "Union of India Vs. Surya Laxmi Cotton Mills in SLP 27736/2023".

10. That the issue of Section 148 notice is not as per law hence assessment proceeding started by taking base of the same will also be considered void ab initio and same shall apply to the penalty proceedings too.

11. That the Assessee seeks for personal hearing in case of requirement of further information.”

3. Brief facts of the case are that the assessee is an individual and had made cash deposits of Rs. 9,28,50,000/- in his bank account for AY 2019-20 in the Punjab National Bank, Nabarangpur Branch. The Assessing Officer (hereinafter referred to as Ld. 'AO') issued show cause notice u/s 148 of the Act to furnish explanation regarding the source of the cash deposits but the assessee did not comply with the notice. The Ld. AO, in the absence of any evidence or explanation from the assessee, treated the entire deposits/credits as unexplained money u/s 69A of the Act and passed order u/s 144 r.w.s. 147 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A), who vide order dated 09.08.2024 did not adjudicate the appeal on merits and dismissed the appeal of the assessee on the ground of delay in filing the appeal before him.



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

5. Rival submissions were heard and the record and the submissions made have been examined.

6. The Ld. AR submitted that the bank account does not belong to the assessee who is a mere attendant of ATM drawing salary of only Rs. 6,000/- per month and was not aware of the matter. The deposits in the bank account are more than Rs. 9.28 Crore and do not belong to the assessee. The Ld. AO made the addition as there was no response to the notices issued and the assessee was not aware of the same. It was also submitted before us that the notice under section 148 was issued on 17/03/2023 while the assessment order has been made on 27/02/2024 due to the long delay, the compliance could not be made in the faceless assessment Since there was no proper compliance before both the Ld. AO as well as the Ld. CIT(A), and he is a mere attendant and the bank account does not belong to him, therefore, in the interest of justice and fair play it was requested to condone the delay in filing the appeal before the Tribunal as well as before the Ld. CIT(A) and remit the matter to the Ld. AO to re-examine the same. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld. It was considered by the Bench that the request of the assessee to set aside the order of the Ld. CIT(A) may be considered as on account of ignorance of tax procedure and the health reasons, the required compliance could not be made and the delay was required to be condoned and the appeal order should have been made on merits of the case. Further, the bank account is claimed not to belong to the assessee but to CMS Infro System Ltd. Hence, the request that the assessment



may be set aside before the Ld. AO so that proper opportunity of being heard may be provided was acceptable. Therefore, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as the assessee had a reasonable cause for the delay in filing the appeal before him and the balance of convenience lies in his favour and therefore, the appeal should not have been dismissed on the ground of delay which was justified. Further, we also set aside the order of the Ld. AO and remit the matter back to the Ld. AO for making the assessment de novo as it was an *ex parte* assessment and proper compliance could not be made by the assessee. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its claim and he shall not seek unnecessary adjournments. Accordingly, all the grounds taken by the assessee in his appeal are allowed for statistical purposes.

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

Order pronounced in the open Court on 29th May, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 29.05.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Hemant Kumar Majhi, Main Road, Kongara, Nabarangapur, Odisha, 764059.**
2. **ITO, Jeypore Ward.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata