

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.249/RPR/2025

निर्धारण वर्ष / Assessment Year : 2015-16

Sri Sai Baba Sansthan
Sai Mandir, Avenue-B, Civic Center,
Sector-6, Bhilai-490 006 (C.G.)
PAN: AADTS8938G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer
Exemption-II, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R. Rao, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.06.2025

घोषणा की तारीख / Date of Pronouncement : 02.06.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 30.08.2024 for the assessment year 2015-16 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that the Ld.CIT(Appeals)/NFAC had dismissed the appeal of the assessee in limine without condoning the delay of 405 days. The assessee had prayed for condonation of aforesaid delay before the Ld. CIT(Appeals)/NFAC by stating as follows:

“For the year under consideration, return of income was filed by the appellant u/s.139 vide acknowledgement No.736025791310317 dt. 31-03-2017. The A.O issued u/s.143(2) dt. 07.08.2017 in response to that return filed by appellant. The A.O completed reassessment vide order dt. 27.12.2017 accepting the returned income and making various addition.

(2) The assessment order was received by the appellant on 02.01.2018 and therefore, the appeal was required to be filed by 01.02.2018 which is now being filed on 13.03.2019, thereby resulting into delay of 405 days.

3) While filing appeal against the assessment order, the appellant changed its counsel and the new counsel appraised the appellant of correct position of law and the illegality of initiation of re assessment proceedings against the appellant. In view of the advice given by the new counsel, the appellant is filing delayed appeal with a request to kindly consider the facts of the case sympathetically and to kindly condone the delay in filing appeal.

(4) Condoning the delay in filing appeal will render justice to the appellant and will prevent an illegal order from being enforced which will advance the cause of justice. It will also prevent the tax being levied in a manner contrary to mandate of law."

3. In this regard, the Ld. CIT(Appeals)/NFAC had observed and held as follows:

"The facts of the case and the grounds raised by the appellant have been considered carefully. There is inordinate delay in the filing of appeal for which no sufficient reason is given by the appellant. The term sufficient cause means that the party should not have acted in a negligent manner but must have acted diligently and not remained inactive. Reliance is placed on the judgement of Hon'ble High Court in the case of M Sri Nivasulu vs ACIT (TS-817-HC- 2023(MAD) dated 21.12.2023. The appellant has failed to justify the inordinate delay in filing appeal. From the factual position which emerges it appears that a conscious and considered decision was taken by the appellant at the relevant point of time for not filing of appeal against the impugned order. It is well-settled law that a distinction must be made between a case where the delay is inordinate and where the delay is of few days only. The inordinate delay in the instant case clearly demonstrates that this appeal was not prosecuted with due care.

On the issue of a routine delay and an inordinate delay the Hon'ble Supreme Court in the case of Vedabhai alias Vajayantabai Baburao Patil vs. Shantaram Baburao Patil [2002] reported in 122 Taxman 114 has made a distinction between delays that are trivial and cases where inordinately large delays had occurred. The Hon'ble Supreme Court further held that the cases of trivial delays have to be liberally considered, however the cases of inordinate delays have to be approached cautiously. The relevant portion of the order of the Hon'ble Supreme Court is reproduced as under.

In exercising discretion under section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may

arise and such a case deserves a liberal approach No hard and fast rule can be laid down in this regard".

In view of the above detailed discussion, it is held that the appellant has no "sufficient cause" in terms of section 249(3) of the Act, for not presenting the appeal within the prescribed period. It is well-settled law that an appellant is not entitled to the condonation as a matter of right. For an appellant to succeed, the existence of sufficient cause is sine qua non and a condition precedent. It is manifestly evident that this ingredient is woefully lacking in this belated appeal filed by the appellant. Thus, the delay in filing the appeal by the appellant, is not considered as sufficient cause and delay is therefore not condoned. Accordingly, the appeal is dismissed without any discussion on merits or on any other aspect.

Considering the above discussion and facts, the appeal filed is not in conformity with the provisions of Sec 249(2) of the Act, and there is no sufficient cause for condonation of the delay in filing of the appeal. The present appeal is dismissed as not maintainable.

Hence, the appeal is dismissed.”

4. I have carefully considered the submissions of the parties, analyzed the facts and circumstances in this case. I am of the view that the order of the Ld. CIT(Appeals)/NFAC is not in terms with Section 250(4) & (6) of the Income Tax Act, 1961 (for short 'the Act'). Admittedly, there has been delay of 405 days in filing appeal before the Ld. CIT(Appeals)/NFAC and the said delay has been explained by the assessee and having gone through the reasons, I am of the considered view that such delay has been caused due to circumstances which are not at all intentional, deliberate or malafide, if any in respect of the assessee. That as per 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) that every appellate authority should decide the grounds of appeal on merits. In this case, the matter has been dismissed in limine without condoning the delay of 405 days by the Ld. CIT(Appeals)/NFAC. That as examined by me, such delay since unintentional and primarily due to change of counsel by the assessee, therefore, it calls for much more judicial approach keeping in view the directives of the **Hon'ble Supreme Court** in the cases viz. (i) **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025;** and (ii) **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025.** Therefore, respectfully following the mandate of the aforesaid judicial pronouncements, the said delay of 405 days is condoned and the matter is remanded back to the file of the Ld. CIT(Appeals)/NFAC for denovo adjudication as per law while complying with the principles of natural justice. The Ld. CIT(Appeals)/NFAC shall pass a speaking order on merits in terms with Section 250(4) and (6) of the Act. At the same time, the assessee is directed to comply all the hearing notices as and when would be issued by the Ld. CIT(Appeals)/NFAC.

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

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

Order pronounced in open court on 2nd day of June, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 2nd June, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / 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, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur