

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 279/GTY/2024
Assessment Year: 2017-18**

Dutta Enterprise	Vs.	Income Tax Officer, Ward-1, Digboi
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AABFD1865D		

Appearances:

Assessee represented by : Arun Kr. Varma, AR.

Department represented by : Kausik Ray, JCIT.

Date of concluding the hearing : 27-March-2025

Date of pronouncing the order : 12-June-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 2017-18 dated 25.10.2023,



which has been passed against the assessment order passed u/s 147 r.w.s 144 read with section 144B of the Act, dated 25.03.2022.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 353 days. An affidavit along with an application seeking condonation of delay has been filed by the assessee. The contents of the condonation petition are as under:

“With reference to the communication sent by the Assistant Registrar. ITAT. Guwahati bench dated 12/12/2024 with respect to defects in appeal number 1TA 279/GTY/2024, the submission for the condonation of delay is presented as under:

1. The ex-parte order u/s 250 of the Income-tax Act. 1961 [hereafter referred to as “the Act”] was passed by the Ld. CIT(A) on 25/10/2023. Thus, the appeal against the order of the Ld. CIT(A) before the Hon’ble ITAT was required to be filed by 24/12/2023. Therefore, the current appeal is being filed before the Hon’ble ITAT after a delay of 353 days.

2. However, the delay in the filing of the appeal neither not due to any mala-fide intentions nor the appellant is in a position to gain an advantage due to the delay. The delay was purely due to severe medical conditions and circumstances beyond the control of the appellant which are being stated in the following points.

3. The appellant is suffering from Type 2 Diabetes Mellitus, urinary tract infection and chronic liver disease since the year 2014 and these conditions have only deteriorated since then. The appellant had undergone treatment at Dibrugarh and thereafter at CMC, Vellore regularly. The appellant is still undergoing medical treatment under supervision of doctors at CMC, Vellore and has been completely bed-ridden for most part of the last one year and under medication with strict diet regime. The medical certificates regarding this are attached herewith for reference.

4. While the appellant had mild degree of diabetes for a long time, the disease took a severe turn in the first half of the year 2023. The appellant initially undertook treatment from doctors at Dibrugarh and thereafter, when the symptoms got more severe, was under the care of doctors at CMC, Vellore and still is under medication.

5. The appellant consulted Dr. Manas Gogoi at Dibrugarh on 06/03/2023 and thereafter, went to CMC, Vellore for consultations with doctors on 10/08/2023 and 19/09/2023. His conditions deteriorated gradually and

he was advised complete bed-rest and strict medication along with diet regime at CMC, Vellore. It was during such conditions that ex-parte order u/s 250 had been passed by the Ld. CIT(A) on 25/10/2023. The appellant again had to visit CMC, Vellore on 08/02/2024 and 05/04/2024. He also had to visit the government Community Health Centre at his native town Digboi on 10/06/2024. After undergoing treatment and following diet regime for months, the health of the appellant has undergone some improvement in last few weeks.

6. The facts discussed in the above points are summarized below:

S.No.	Date/ Period	Remarks
1.	06/03/2023	Visit to Dr, Manas Gogoi, Dibrugarh
2.	06/03/2023 to 09/08/2023	Treatment under Dr. Manas Gogoi, Dibrugarh
3.	10/08/2023	Visit to CMC, Vellore and treatment under supervision of their doctors.
4.	19/09/2023	Another visit to CMC, Vellore and continued treatment.
5.	25/10/2023	Order u/s 250 by Ld. CIT(A)
6.	08/02/2024	Another visit to CMC, Vellore and continued treatment.
7.	05/04/2024	Another visit to CMC, Vellore and continued treatment.
8.	10/06/2024	Visit to Govt. CHC, Digboi
9.	From June 2024 till date	Continued medication and improvement in condition in last few weeks.

The medical certificates regarding the above discussion are attached herewith for reference.

7. It is also pertinent to mention that due to severe medical conditions of the appellant and the adverse effect of COVID on businesses in general, the business of the appellant has been on a downward trend for the last few years. Further, the chartered accountant of the appellant succumbed to COVID during the pandemic. The shrinking of business as well as the medical cost of treatment has put the appellant under huge financial difficulties as well, due to which he has been without any professional help regarding tax related matters for last few years. Without the services of a professional tax practitioner, it was not possible for the appellant, given his medical condition, to arrange the various documents and evidences related to about six years ago and file the appeal within due date on his own.

8. Thus, from the above discussion, it can be seen that the delay has been due to extremely severe medical conditions which rendered him bed-ridden for most parts of the last one year and completely unfit for any arduous tasks.

9. In this regard, it is pertinent to mention the judgment of the Hon'ble Supreme in the case of Collector, Land & Acquisition vs Mst. Katji & Others (1987) 167 ITR 471 (SC) wherein the apex court has advocated for a liberal

approach while considering cases of condonation of delay. The Hon'ble court has observed:

“The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court.”

The Hon'ble court has further observed:

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala Tides, A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*
- 10. The Hon'ble Bombay High court in the case of Vijay Vishan Meghani vs DCIT reported in 398 ITR 250 (Bom) also advocated a similar approach and had condoned a delay of 2984 days. The Hon'ble court, while quoting a judgment by the Hon'ble Supreme, court in the case of M/s. Concord of India Insurance Co. Ltd. vs. Smt. Nirmala Devi and others, observed:*

“Eventually, an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant has



deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bona fides. These are, therefore, some of the relevant factors. Those factors should therefore necessarily go into an adjudication of the present nature.”

11. *The judgment of the Hon’ble Supreme Court in the case of N. Balakrishnan vs M. Krishnamurthy is also notable wherein the hon’ble court observed:*

“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 want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.”

12. *Further, similar observations have been held in various decisions of the Hon’ble tribunals as well, such as the following:*

(a) PME Power Projects India Ltd vs DCIT, New Delhi in ITA Nos. 242 & 249/Del/2024 wherein the Hon’ble tribunal condoned a delay of 2423 days.

(b) Smt. Kamalpreet Singh vs ITO in ITA Nos. 1750 & I751/Del/2023 dated 15/05/2024 wherein the Hon’ble tribunal condoned a delay of 1670 days.

(c) M/s Saravana Slocks Investments (P) Ltd vs DCIT in ITA No. 2803/Chny/2019 dated 12/04/2023 wherein the Hon’ble tribunal condoned a delay of 1526 days.

13. *Thus, it can be seen that Hon’ble courts and tribunals in various judgments and decisions have adopted a liberal approach in condoning the delay in filing of appeal and have heard cases on merits for the purpose of substantial justice. It is the humble prayer of the appellant that his severe medical condition supported by medical documents be considered to be bona-fide and under the purview of “sufficient cause” for condonation.*

14. *Therefore, in view of the facts and circumstances mentioned above, it is most humbly prayed that the Hon’ble tribunal may kindly be pleased to condone the delay of 353 days in the tiling of appeal and let the case be heard on merits in the wider interests of substantial justice.”*

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 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. For that the impugned order of assessment dated 25.03.2022 passed under section 147 r.w.s. 144 and 144(3) of the Income-tax Act, 1961 (the Act) by the learned Assessing Officer, National Faceless Assessment Centre (the AO) is bad in law, facts and procedure.

2. For that in absence of any valid ‘reason to believe’ having been recorded before issuance of notice under section 148 of the Act, the impugned order of assessment is bad in law. The reassessment proceeding having been initiated without bringing on record any material to show that any business income was actually earned by the appellant at the rate of 8% on Gross Total Receipts which was reflecting in 26AS which is chargeable to tax in his case and having been initiated merely on suspicion and for making a roving and fishing enquiry, the same is bad in law and unsustainable.

3. For that in absence of any material having been brought on record to show that no 8% income was earned by the appellant from business activity carried, by him which forms part of total income, the Id. AO was not justified in arbitrarily and whimsically assessing the total business income of the appellant at Rs 46,21,444/- by unreasonable shifting the onus which was on the Revenue in a proceeding initiated under section 147 of the Act.

4. For that the Id. AO has erred of facts in whimsically holding that the appellant has deposited cash of Rs. 2,50,000/- in Bank Account and in consequently, adding the said amount to the income of the appellant by invoking the provisions of section 69A of the Act, without appreciating the entire facts and circumstances of the case in proper perspective. The cash deposit of Rs. 2,50,000/- was related to miscellaneous business receipts and deposit of extra amount withdrawn from bank account for expenses mentioned in the following para 7. Thus, the addition of Rs. 2,50,000/- u/s 69A of the Act is totally unwarranted.

5. For that the Id. AO was not justified in arbitrarily assuming Rs. 65,87,000/- as taxable income of the appellant on the account of cash withdrawn from bank account by invoking provisions of section 69C of the Act without appreciating the entire facts and circumstances of the case in proper perspective. The cash withdrawal was done for the purposes of various business transactions related to the contract work such as payment of labourers, buying of raw materials and other miscellaneous business expenses. Therefore, there is no pertinent reason to add this amount u/s 69C of the Act.



6. For that the impugned order of assessment having been passed in gross violation of principles of natural justice and without allowing reasonable opportunity of being heard to the appellant, the same is bad in law and is liable to be quashed on this ground alone.

7. For that the Id. AO was not justified in charging tax @ 60% and surcharge @ 25% in respect of entire amount of Rs. 65,87,000/-.

8. For that the appellant denies his liability of being charged off of interest under sections 234A and 234B of the Act at Rs. 37,57,376/- and Rs. 40,25,760/-, respectively. The aforesaid charge being not in accordance with the law, the same is liable to be deleted in its entirety.

9. For that the Learned Assessing Officer did not follow the SOP prescribed by the Central Board of Direct Taxes on this issue and hence the addition in violation of the same is bad in law and hence the same be deleted.

10. For that in the facts and circumstances of the case the assessment order was passed merely based on report provided by third party and no independent inquiry was made by the Learned Assessing Officer. Hence the addition / disallowances made be deleted.

11. For that the income was not computed properly and hence the impugned assessment order be set aside and the assessing officer be directed to conduct a fresh assessment as per law.

12. For that the assessing officer did not grant full and proper credit tax credit and hence the assessing officer be directed to allow proper credit of taxes as per law.

13. For that the appellant craves leave of your honour to take additional ground or grounds of appeal and/or to resign or modify any ground(s) of appeal before or at the time of hearing”

3. Brief facts of the case are that the assessee being a firm did not file the return of Income for AY 2017-18 and was assessed at the total income of ₹ 1,14,58,444.00/- vide order u/s 147 of the Act dated 25.03.2022 by making the additions of a) ₹ 2,50,000.00 cash deposit treated as unexplained money u/s 69A of the Act, b) ₹ 65,87,000.00 cash withdrawal added as unexplained expenditure u/s 69C of the Act, and c) Income from contract receipts of ₹ 46,21,444.00 added as business income @ 8% of the total contract receipts. The case was



selected for limited manual scrutiny. The assessee generally deals in business of contract of various government departments and also Public Sector Companies and the TDS deducted by the various departments was reflected in Form No. 26AS on the Income Tax Portal. As no return of income was filed, proceeding under section 147 of the Act was initiated and notice u/s 148 of the Act was issued but no explanation was filed, therefore, the total income was assessed at ₹ 1,14,58,444/- u/s 144 read with section 147 of the Act.

3.1 Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued three notices to the assessee. However, as no written submission was filed in support of the grounds taken during the appeal, the Ld. CIT(A), relying upon the decision of Hon'ble Supreme Court in the case of **CIT Vs. BN Bhattacharya (1997) 118 ITR 461 (SC)** and also the decisions of Hon'ble Delhi ITAT in the cases of **CIT Vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Delhi)** and **Vipul Logistic & Warehousing (P) Ltd Vs. ITO**, wherein the order of the Ld. CIT(A) dismissing the appeal has been confirmed by the Hon'ble Delhi Tribunal, found no interference to be called for in the order of the Ld. AO and the appeal was dismissed. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

4. Before us in the appeal, the assessee has submitted in the statement of facts that the assessee was not aware of the proceedings till the fag end of the limitation period and an order u/s 144 of the Act was passed making huge additions in which not only the cash deposits but also the cash withdrawals have been added without giving the benefit of either of them. It is also stated that the computation of income forming part of the order exceeded the income as assessed in the



assessment order. The assessee is a Contractor of government department and also Public Sector Company and the additions made are baseless and purely on conjectures and summaries and bad in law.

5. We have considered the submissions made. The Ld. DR submitted that since the assessee did not represent before the Ld. AO or the Ld. CIT(A) therefore, the appeal should be dismissed and the order of the Ld. CIT(A) may be confirmed.

6. Since the assessee did not respond to the notice issued, nor any return of income was filed in response to the notice under section 148 of the Act, the assessment order had to be made under section 147 read with section 144 of the Act. However, it is noted that additions have been made not only in respect of the cash deposits but also in respect of the withdrawals, which does not appear to be justified as income had to be computed to the best of judgement while making assessment under section 147 read with section 144 of the Act. In this respect, Hon'ble Supreme Court in the case of **Kachwala Gems v. Joint Commissioner of Income-tax, Jaipur [2007] 158 Taxman 71 (SC)** has held as under:

"It is well-settled that in a best judgment assessment, there is always a certain degree of guess work. No doubt, the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts. There was no arbitrariness in the instant case on the part of the authorities. Thus, there was no force in the instant appeal and the same was to be dismissed accordingly. [Para 11]"

6.1. Further, in the case of **Brij Bhushan Lal Parduman Kumar, v. Commissioner of Income-tax [1978] 115 ITR 524 (SC)**, Hon'ble Supreme Court has also held as under:

“The authority making a best judgment assessment must make an honest and fair estimate of the income of the assessee and though arbitrariness cannot be avoided in such estimate the same must not be capricious but should have a reasonable nexus to the available material and the circumstances of the case.”

6.2. Also, in the case of **State of Kerala v. C. Velukutty [1966] 60 ITR 239 (SC)** it has been held that:

“Under section 12(2)(b) of the Act, power is conferred on the assessing authority in the circumstances mentioned thereunder to assess the dealer to the best of his judgment. The limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case. Though subsection (2) of section 12 of the Act provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard for the available material.”

6.3. Similarly, in the case of **Tara Singh v. Income-tax Officer, Ward III Khanna [2017] 81 taxmann.com 293 (Punjab & Haryana)** it has been held that:

“Law in respect of best judgment assessment is well settled. The assessing authority while making the best judgment assessment should arrive at its conclusion without any bias and on rational basis. That authority should not be vindictive or capricious. If the estimate made by the assessing authority is a bona fide estimate and is based on a rational basis, the fact that there is no good proof in support of that estimate is immaterial. Prima facie, the assessing authority is the best judge of the situation. It is his best judgment and not of anyone else.”

7. Thus, even in a best judgment assessment, the Assessing Officer ought to have estimated the income of the assessee instead of adding the entire deposits and/or the withdrawals besides estimating profit on the gross receipts. The Ld. AO has not only added the withdrawals but also the deposits in the bank account without giving the benefit of either



of them. The assessee is a Government contractor as claimed and had received contractual receipts and proper TDS was also deducted. It was submitted before us that proper representation could not be made before the Ld. Assessing Officer though it has necessary evidence for the income earned during the year and the assessment made at ₹ 1,14,58,444/- u/s 144 r.w.s. 147 of the Act is unreasonable and the Ld. AO has not given any reason for applying the profit rate of 8%.

8. We have considered the submissions made and also the facts of the case. Since proper compliance was not made before the lower authorities, therefore, the Bench was of the view that another opportunity may be granted to the assessee to make its submission before the Ld. AO. Therefore, the order of the Ld. CIT(A) as well as the Ld. AO are hereby set-aside and the matter is remanded to the Ld. AO to make the assessment de novo after granting an opportunity of being heard to the assessee and after considering the reply of the assessee. The assessee shall not seek unnecessary adjournments and the Ld. AO shall pass the order in accordance with law to the best of his judgement.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 12th June, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 12.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Dutta Enterprise, Mission Para, Digboi, Tinsukia, Assam, 786171.**
2. **Income Tax Officer, Ward-1, Digboi.**
3. CIT(A)- NFAC, Delhi.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata