

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

(VIRTUAL HEARING AT KOLKATA)

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 185/CTK/2025
(ASSESSMENT YEAR : 2017-18)**

Kapildev Dubey, At, Ward No. 23, P.O./P.S.- Baripada, Dist- Mayurbhanj- 757001, Odisha (PAN: ACHPD4620J)	Vs	Income Tax Officer, Ward-2, Baripada, Odisha - 757001
(Appellant)		(Respondent)

Present for:

Appellant by : P.K. Mishra, Advocate
Respondent by : S.C. Mohanty, Sr. DR

Date of Hearing : 15.05.2025
Date of Pronouncement : 16.06.2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

1. This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)”) passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2017-18, dated 24.07.2023, which has been passed against the assessment order u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 30.12.2019.
2. The grounds of appeal raised by the assessee are reproduced as under:

“1. For that, the learned CIT(Appeal) has committed gross error of law as well as of fact in dismissing the appeal of the Appellant, without providing sufficient

effective reasonable opportunity of being heard to the Appellant. The impugned Appellate order passed by the learned CIT(A), being made on gross violation of principles of natural justice is not sustainable in the eye of law, hence needs to be quashed in the interest of justice.

2. For that, learned CIT(A) has committed gross error of law as well as of fact in confirming the addition of deposit of old SBNs of Rs.14,76,500.00, made by the learned A.O., treating it as unexplained money by applying provisions of section 69A of the Act, ignoring the fact that, the Assessee has been running petrol pump and deposits made in the bank account are cash balance available in cash book as on 02.12.2016 and are trading receipts received by the Appellant, as such, the impugned addition made by the learned A.O. and confirmed by the learned CIT(A), being not sustainable in the eye of law, needs to be deleted in the interest of justice.

3. For that, when the sales turnover was accepted and the alleged deposits of Rs.14,769,500.00 forms part of sales turnover, the learned A.O. has committed gross error of law as well as of fact in treating part of sales turnover as unexplained money by applying provisions of section 69A of the Act, ignoring the explanation offered and evidences produced by the Appellant during course of assessment. The impugned addition made by the learned A.O. and confirmed by the learned CIT(A), being not sustainable in the eye of law is liable to be deleted in the interest of justice.

4. For that, section 69A of the Act has no application under the facts and in the circumstance of the present case, as such, the impugned addition made by the learned A.O. of Rs.14,76,000.00 and confirmed by the learned CIT(A), being completely wrong, illegal, contrary to the facts on record and settled principles of law is not sustainable in the eye of law, hence needs to be deleted in the interest of justice.

5. For that, since the Appellant was running a petrol pump and when as per the Government of India and RBI guidelines, it was permitted to accept the old SBNs, the learned A.O. and learned CIT(A) have committed gross error of law in treating the trading receipts as unexplained cash deposited u/s.69A of the Act, as such, the consequential addition being not sustainable in the eye of law, needs to be deleted in the interest of justice.

6. For that, the Impugned estimation of net profit @7.57% from cloth business and 2.0% from petrol pump business separately made by the learned A.O., on the basis of previous year return of income, ignoring the explanation offered and without providing further effective opportunity of being heard to the Assessee to substantiate it, is illegal, contrary to the facts on record and not sustainable in the eye of law. The assessment order confirmed by the learned CIT(A), being not sustainable in the eye of law is liable to be quashed in the interest of justice.

7. For that, when the Appellant has disclosed the net profit arising out of two of his businesses in his consolidated audit report and return of income, without giving any comparable cases, the estimation of net profits separately at such high rates on the basis of previous year's return of income are illegal and highly excessive, hence not justified in the eye of law. The orders passed by both the authorities below, being not sustainable in the eye of law are liable to be quashed in the interest of justice.

8. For that, the Appellant firm craves leave of this Hon'ble Tribunal to urge other grounds of appeal, if any, at the time of hearing in the interest of justice.

3. The registry has informed that the appeal is delayed by 531 days. It is observed that along with the memo of appeal, the assessee has also filed an application along with an affidavit seeking condonation of delay and has requested that the delay may be condoned. It is mentioned that the appellant was suffering from heart stroke and acute cardiological problem and was under treatment and being busy with medical treatment and moving from hospital to hospital for treatment, he was not able to look into the aspect of filing appeal due to which the delay has been caused. When on 12/03/2025 the appellant joined his business work and contacted his previous counsel, he came to know that the appeal order had been passed on 24/07/2023 and because of the absence of the appellant, no step was taken by the previous counsel. Therefore, after collecting the orders the assessee contacted the present counsel on 30/03/2025 and requested him to take necessary legal remedies available and the appeal has been filed without further delay on 14/03/2025. It is stated that the delay of 539 days in filing the appeal is *bona fide* and there is no evil intention of the appellant to cause delay deliberately and the same may be condoned and the appeal may be admitted. We have considered the submissions made. It has been held in the case of **Hind Development Corporation v. Income-tax Officer [1979] 118 ITR 873 (CAL.)** as under:

Even assuming that the appeal was time barred, we may consider whether the Tribunal was justified in condoning the delay when there was no prayer for such condonation. The relevant provision in that regard is contained in s. 253(5) of the I.T. Act, 1961, which provides that the Appellate Tribunal may admit the appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-s. (3) or sub-s. (4), if it is satisfied that there was sufficient cause for not presenting it within that period. Sub-section (5), therefore, confers a jurisdiction on the Appellate Tribunal to condone the delay in filing the appeal beyond the period of limitation, provided it is satisfied that there was sufficient cause for the same. The question is whether the Tribunal can, out of its own,

condone the delay on a finding that there is sufficient cause for not presenting the appeal within the period of limitation. Normally it is the duty of the appellant to make out a sufficient cause for condonation of delay. But so far as the provision of sub-s. (5) is concerned, it authorises the Tribunal to condone the delay if there is sufficient cause. The only condition that is to be fulfilled is that the Tribunal must be satisfied about the existence of sufficient cause for not presenting the appeal within the period of limitation. In our view, therefore, if the materials on record show that there was sufficient cause for the delay in filing the memorandum of appeal and if the Tribunal is satisfied about the same, the Tribunal can condone the delay.

3.1 Considering the application seeking 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 on merit.

4. Brief facts of the case are that the appellant is an individual and was engaged in retail trading of cloth and petrol pump. The return of income for the Assessment year 2017-18 was e-filed on 15.11.2017 declaring total income of Rs. 8,53,890/-. Subsequently, the case was selected for scrutiny under CASS. In the course of assessment proceeding, it was found by the Ld. AO that an aggregate amount of Rs. 14,76,500/- comprising Specified Bank Notes (SBN) i.e. erstwhile old Rs.500/- & Rs. 1000/-notes, had been credited in the bank account in Bank of Baroda and State Bank of India. In response to the above notices, the assessee furnished various documentary evidences. After examining the books of accounts and other relevant documents submitted by the assessee, the assessment was completed under section 143(3) of the Act at the total income of Rs. 33,47,350/-. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide order dated 24/07/2023 dismissed the appeal as despite giving 10 opportunities of hearing as mentioned in para 6 of the appeal order, the assessee failed to submit any documents/evidences in support of the claim and arguments during the appellate proceedings and on account of non-submission of the supporting evidences it could not be concluded by him as to how the

order of the Ld. AO was erroneous and therefore, the addition of Rs. 14,76,500 made under section 69A of the Act was upheld. 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. It was submitted by the Ld. AR that the assessee had deposited SBNs of Rs. 14,76,500/- during the period of demonetisation. The assessee runs a petrol pump and also carries on the business of cloth. The Ld. AO rejected the books of accounts and applied the net profit rate of 7.57% for the cloth business and 2.0% for the petrol pump and made additions to the returned income. A sum of Rs. 40,76,500/- was also added u/s 69A of the Act. It was submitted that proper representation could not be made on account of lack of communication with the previous counsel and no proper compliance could be made even before the first appellate authority. It was requested that the assessee may be granted another opportunity as he has enough evidence in support of the income returned. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). We find that at both the stages of assessment order before the Ld. AO as well as before the Ld. CIT(A) in the appeal, proper representation was not made on behalf of the assessee. While the assessment order has been made under section 144 to the best of judgement, the appeal has also been decided ex parte, primarily on account of non-prosecution on behalf of the assessee by the Ld. AR. Therefore, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. CIT(A). We, therefore, set aside the order of the Ld. CIT(A) and remit the appeal to him

to be decided afresh, who shall allow an opportunity of being heard to the assessee and also grant an opportunity of representing the case and be heard to the Ld. AO as per rule 46A of the Income Tax Rules, 1962, if required, and thereby pass an order in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 16.06.2025.

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 16th June, 2025

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata