

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.102/Nag./2025
(Assessment Year : 2013-14)

Kshitiz Ramprasad Agrawal
1st Floor, Jagdish Apartment
Ambedkar Square, Bagadganj S.O. Appellant
Nagpur (Urban), Nagpur 440 008
PAN – AEVPA6217L

v/s

Income Tax Officer
Ward-4(1), Nagpur Respondent

Assessee by : Shri Kapil Hirani a/w
Shri Nitesh Agrawal
Revenue by : Shri Anand Nagrale

Date of Hearing – 17/06/2025

Date of Order – 17/06/2025

ORDER

PER N.K. CHOUDHRY, J.M.

Captioned appeal has been filed by the assessee challenging the impugned order dated 15/11/2023, passed by the learned Commissioner of Income Tax (Appeals), [for short, "*learned CIT(A)*"], by the National Faceless Appeal Centre, Delhi, for the assessment year 2013-14.

2. There is an inordinate delay of 379 days in filing the instant appeal. At the outset, it is observed that on the issue of delay of 379 days, the assessee has submitted by way of a condonation application as below:–

"With reference to the above cited matter the assessee most respectfully submits before your honor, the reason for delay in filing the appeal is submitted hereunder:

The assessee humbly prays before your honor to accept the appeal and condone the delay in filing the appeal. The assessee had filed appeal before the Hon'ble Commissioner of Income Tax (Appeal) National Faceless Appeal Centre. Subsequently the Hon'ble CIT(A) Communicated Hearing Notice u/s 250 of Income Tax Act, 1961 via an email which is not a registered or accessible mail account of the assessee. The notices towards fixing date of hearing were email on nimje.jayesh18@gmail.com while the email id mentioned in form no 35 is rrgroupincometax@gmail.com.

The Hon'ble CIT(A) passed the order under section 250 on 29/03/2023. The assessee was not aware of the passing of the order by the Hon'ble CIT(A). When the assessee came to know about the Vivad Se Vishwas Scheme, 2024, he approached the authorized representative to opt for the scheme. At that time, the assessee became aware of the passing of the CIT(A) order. Thereafter, the assessee sought professional assistance and filed the appeal before this Hon'ble Bench. Due to the above-cited reason, there was a delay in filing the appeal before your honor.

Thus, in the light of the above-mentioned facts the assessee submits that the delay was unintentional and beyond control of the assessee. Accordingly, the assessee requests before your honor to kindly condone the delay in filing of appeal and admit the same for the sake of justice to the assessee."

3. Accordingly, the assessee submitted that the delay was unintentional and beyond the control of the assessee because of the aforesaid reasons and, therefore, for the sake of justice to the

assessee, the appeal of the assessee may be admitted for adjudication by condoning the delay in filing of the same.

4. On the contrary, the learned Departmental Representative refuted the claim of the assessee.

5. We have given thoughtful consideration to the reasons stated by the assessee for condoning the delay as mentioned above. The reasons stated by the assessee prima facie appears to be bona fide, and there is a sufficient and reasonable cause for delay. Therefore, for substantial justice, we are inclined to condone the delay of 379 days. However, subject to deposit a sum of ₹ 11,000, (Rupees eleven thousand only) within 15 days from the date of this order in the Revenue Department under the "Other Head".

6. Coming to the merits of the case, it appears from the impugned order that in spite of affording four opportunities, the assessee made no compliance and, therefore, in the constrained circumstances, the learned CIT(A) was constrained to decide the appeal filed by the assessee as ex-parte and on the basis of material available on record and in consequence, affirmed the assessment order by which addition of ₹ 14,65,000, under section 68 of the Income Tax Act, 1961 (for short "*the Act*") on account of long term capital gain qua trading of

penny scrips of Indian Infotech & Software Ltd. (IISC), was made by observing and holding as under:-

"5. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the order. The notices have been duly served upon the assessee via e-mail. Regrettably no response whatsoever was forthcoming on the appointed date. Thus, nothing has been placed on record to substantiate as to why the addition made by the AO should not be sustained.

6. In view of the above, the undersigned is left with no option but to decide the case on the basis of material on record. Bare perusal of the facts shows that the appellant has not pursued the appeal despite being granted several opportunities as elaborated supra. The assessee has further jeopardized its case by not responding despite several opportunities that were provided. I am constrained to agree with the approach adopted by the AO in making addition. The AO has passed a reasoned and speaking order considering all the facts and the circumstances of the case and no interference with the order of the AO is called for. The grounds of appeal are therefore dismissed."

7. The assessee has pleaded that one last and final opportunity may be afforded to the assessee to substantiate its case, as the assessee is having a good case on merits.

8. The learned Departmental Representative has refuted the submissions of the learned counsel for the assessee and prayed that the order of the lower authorities need not be disturbed.

9. Considering the facts and circumstances, as the learned CIT(A) has recorded his observations as stated above that in the absence of relevant documents, he was constrained to agree with the approach

followed by the Assessing Officer in making the addition, which shows that the learned CIT(A) was unable to decide the issue involved in its right perspective and manner as the assessee has admittedly failed to file any document in utter defiance to the provisions of section 250(6) of the Act. Thus, we deem it appropriate to remand the instant case to the file of the learned CIT(A) for deciding the issue afresh. Suffice to say, reasonable opportunity of being heard be provided to the assessee. The assessee is also directed to comply with the notices and file submissions / documents which may be requisitioned by the learned CIT(A) for decision afresh.

10. In the result, appeal of the assessee is allowed for statistical purposes in terms as indicated above.

Order pronounced in the open Court on 17/06/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
N.K. CHOUDHRY
JUDICIAL MEMBER

NAGPUR, DATED: 17/06/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur