

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 16/PAT/2025
Assessment Year: 2015-16**

Mintu Rani	Vs.	Assessment Unit, Income Tax Dept.
(Appellant)		(Respondent)
PAN: AITPR7745N		

Appearances:

Assessee represented by : Manish Rastogi, Adv.

Department represented by : None.

Date of concluding the hearing : 18-June-2025

Date of pronouncing the order : 25-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 2015-16 dated 24.09.2024,



which has been passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 20.03.2024.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 45 days. An application seeking condonation of delay has been filed by the assessee stating as under:

“The National Faceless Appeal Centre (NFAC), Delhi, vide appeal number ITBA/NFAC/S/250/2024-25/1069009534(1), dated 24-09-2024, has dismissed the appeal of the appellant without allowing reasonable opportunity of being heard.

The appellate order is deemed to have been served on 24-09-2024, itself on the day of passing of the order as the order was passed online. The limitation for filing the appeal before this Hon'ble bench is 29-11-2024 and the appeal has been filed before the Hon'ble Tribunal on 06-01-2025, therefore, there is delay of 38 days in filing the appeal.

The delay in filing the appeal occurred due to reasons beyond the control of the appellant. The services of the tax professional initially engaged by the appellant were availed with the expectation that the appeal would be filed within the prescribed time limit. However, the deadline for filing the appeal was inadvertently missed by the said tax professional.

Upon becoming aware of the lapse, the appellant sought the assistance of another tax professional to ensure proper representation before the Hon'ble Tribunal. The appeal was then promptly prepared and is being filed without any further delay.

In view of the foregoing it would gratuitously be appreciated that the circumstances leading to the delay were beyond the appellant's control.

It is therefore humbly prayed that your Lordships would be kind enough to condone the delay in filing the appeal and allow the appeal filed by the appellant to be proceeded with.”

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 National Faceless Appeal Centre (NFAC), Delhi, [the NFAC] erred on facts and in law in dismissing the appeal filed by the appellant, vide order passed under section 250 of the Income Tax Act, 1961, (the Act), dated 24-09-2024.

2. For that the NFAC erred in confirming the assessment order passed by the Assessment Unit, Income Tax Department, (the AO), assessing the appellant under section 147 read with section 144 of the Act, vide order dated 20-03-2024 at an income of Rs 1,15,11,871/- against the returned income of Rs. 2,22,280/- by making additions as detailed under;

Sl. No.	Particulars	Amount (Rs)	Amount (Rs)
i.	Updated returned Income		222280
ii.	Additions Made		
a.	Alleged unexplained investment in immovable property.	3751000	
b.	Alleged unexplained deposits in the bank account.	7254686	
c.	Alleged exempt income claimed.	283905	11289591
iii.	Net assessed income, (i+ii)		11511871

3. For that the learned NFAC has erred in the facts and circumstances of the case in confirming the action of the AO by not considering the return income filed by the appellant, which is wrong, illegal and unjustified.

4. For that the learned NFAC has erred in the facts and circumstances of the case in confirming the action of the AO in making addition of Rs 37,51,000/- on account of alleged investment in immovable property, which is wrong, illegal and unjustified.

5. For that the learned NFAC has erred in the facts and circumstances of the case in confirming the action of the AO in making addition of Rs 72,54,686/- on account of alleged deposits in the bank accounts, which is wrong, illegal and unjustified.

6. For that the learned NFAC has erred in the facts and circumstances of the case in confirming the action of the AO in making addition of Rs 2,83,905/- on account of alleged exempt income claimed by assessee, which is wrong, illegal and unjustified.

7. For that the learned NFAC has erred in the facts and circumstances of the case in confirming the action of the AO in arbitrarily passing ex-party order



without allowing roper opportunity of being heard, which is wrong, illegal and unjustified.

8. That the whole order passed by the NFAC is bad in facts and law.”

3. Brief facts of the case are that the assessee is a non-filer. The Assessing Officer (hereinafter referred to as Ld. 'AO') assessed the total income of the assessee at ₹ 1,15,11,871/- u/s 147 r.w.s. 144B of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who has dismissed the appeal of the assessee on the ground of delay.

4. Rival contentions were heard and the submissions made have been examined. Before the Ld. CIT(A) the ground for condonation of delay was mentioned as *“The women is always sick and regular treatment.”* The appeal before the Ld. CIT(A) was filed within 30 days from the date of service which was 20.03.2024 but the same was filed on 15.03.2024 and has no evidence to substantiate the claim of sickness was filed therefore, the delay was not condoned and the appeal was dismissed.

5. On perusal of the appellate order it is noticed that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent by e-mail were not complied with but he has not adjudicated the appeal on merit. In this respect, it is relevant to examine the provisions of section 250(6) which are reproduced as under:

“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

6. Thus, section 250(6) of the Act casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and the decision as well as the reason for arriving at such decision. In

the present case before us, the Ld. CIT(A) has not mentioned the reasons after examining the records while disposing of the appeal. The Ld. CIT(A) has neither adjudicated upon various grounds of appeal nor has passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose the assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.

7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”

6.1 It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** that the law does not empower the CIT(A)

to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

"7. An appeal is filed with the CIT(A) from appealable orders listed in Section 246A of the Act. We find that the procedure in appeal before the CIT(A) and the powers of the CIT(A) are governed by Sections 250 and 251 of the Act respectively. The relevant provisions for consideration are as under:—

'Procedure in appeal

250 (4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).

...

(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

...

Powers of the Commissioner (Appeals)

"Section 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers —

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.

...

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty."

...

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation. - In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.'

8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make



further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

7. We have considered the submissions made. Both before the Ld. AO as well as the Ld. CIT(A) proper representation was not made which is claimed to be on account of illness of the assessee and lack of proper advice being received from the Tax Consultant. Hence, in the interest of justice the Bench was of the view that another opportunity of being heard may be provided before the Ld. AO, therefore, both the orders 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 grant adequate opportunity of being heard considering the submission thereof pass the assessment order *de novo*.



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

Order pronounced in the open Court on 25th June, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 25.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Mintu Rani, House No-12, Near Dr. Ramadhar, GPO, Karbigahiya, Patna, Patna, Bihar, 800001.**
2. **Assessment Unit, Income Tax Dept.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata