

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्रीअरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA Nos: 271, 272 & 273/RPR/2025

(निर्धारण वर्ष Assessment Years: 2016-17, 2017-18, 2018-19)

District Project Livelihood College Society, 34 DSDA, Collectored Campus, Gariaband- 493889, C.G.	v s	Income Tax Office (TDS), Aayakar Bhawan, Civil Lines, Raipur-492001, C.G.
TAN: JBPD03893B		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Vikram Chhabda, CA
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	04.07.2025
घोषणा की तारीख / Date of Pronouncement	:	10.07.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The aforesaid three appeals filed by the assessee are directed against the separate orders of Addl./ JCIT (A)-5, NFAC, Mumbai, [in short "Ld. Addl/JCIT(A)"], passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), all dated 11.02.2025, for the Assessment Year's 2016-17, 2017-18, 2018-19, which in turn arises from the separate orders passed u/s 201(1) & 201(1A) of the Act, by the Income Tax Officer (TDS), Raipur, for respective assessment years, all dated 30.01.2019.

2. At the outset, it is noticed that all the aforesaid appeal by the assessee is assailed against the impugned orders challenging the penalty levied u/s 201(1) & defaults u/s 201(1A). Since the issues involved in the present appeals have common grievances, under similar facts and circumstances, except the quantum of demand, therefore, the same are heard together and accordingly are disposed of by this common order.

3. To dispose of the aforesaid appeals, ITA No. 271/RPR/2025 has been taken up as the lead case, wherein our decision and observations shall apply *mutatis mutandis* to the remaining appeals i.e., ITA No. 272 & 273/RPR/2025.

4. The grounds of appeal furnished by the assessee in **ITA No. 271/RPR/2025** for AY 2016-17 are as under:

1. *That on the facts and in the circumstances of the case and in law, the order of Ld. Addl./JCIT (A)-5 Mumbai in dismissing the appeal of the appellant is incorrect and the appeal of the appellant deserves proper adjudication in the interest of natural justice.*
2. *That on the facts and in the circumstances of the case and in law, the assessing officer defied the principles of natural justice by not allowing proper opportunity of being heard to the appellant.*
3. *That on the facts and in the circumstances of the case and in law, the assessing officer erred in treating the appellant assessee in default u/s 201(1) and levied penalty of Rs.9,07,501/- on account of non-deduction of TDS u/s 201(1).*
4. *The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.*

5. At the outset, Ld. AR representing the assessee submitted that the aforesaid three appeals are dismissed by the Ld. Addl/JCIT, NFAC on account of delay in filing of appeal, which has not been condoned by the First Appellate Authority, even after assessee's submissions for condonation of delay having justifiable reasons to do so. To clarify further, Ld. AR drew our attention to the relevant observations of the Ld. Addl/JCIT(A) while disposing of the appeal, which for the sake of completeness are extracted as under:

2. Decision:

The submission of the appellant is considered. It is seen that the order u/s 201 dated 30.01.2019 was served on 26.02.2019 and appeal is filed on 24.01.2023. Thus there was delay of 1429 days. Even if the period of from 15.03.2020 to 28.02.2022, as per Hon'ble Supreme Court order, is excluded still there is delay of 730 days in filing of appeal. In its submission the appellant has stated that it was not aware about the process of filing of appeal. Further it has also submitted that it was pursuing the matter with the AO. It may be apposite to mention here that the appellant being a government agency cannot claim the ignorance of law as a justification for delay in filing of appeal. The courts have also held that pursuing the alternative mechanism cannot be a ground justifying the delay in filing of appeal. In the case of Amar Shakti Co-operative Labour & Construction Society Ltd. vs. Commissioner of Income Tax, Bhatinda, [2009] 2 taxman.com 62, Hon'ble Punjab and Haryana High Court has held that merely because the rectification application u/s 254(2) was pending before the tribunal cannot justify the delay in filing of appeal before the High Court. The appellant was required to furnish the sufficient cause together with the evidence for the claim made. This has not been done. Therefore, it held that the reasons given for condonation of delay does not tantamount to sufficient cause within the meaning of

section 249(3) of the Act and the delay is attributable to the negligence and inaction on the part of the appellant. The filed submission justifying the condonation is general in nature and without any supporting evidence hence it is held that it is not providing any just and sufficient reasons for delay whereas the law provides for explaining day to day reasons for delay. [See: K.G.N.M.M.W. Educational Research & Analysis Society, [2015] 54 taxmann.com 329 (Jaipur-Trib)] and hence the delay in filing of this appeal cannot be condoned.

6. It was the submission by Ld. AR that the assessee is a government organization registered with registrar of firm and society on 12.12.2014 to achieve the object of “*Chhattisgarh right of youth to skill development Act, 2013*”, to provide free skill training to youth in the tribal area of Chhattisgarh State. To substantiate *qua* the reasons for delay in filing of appeal before the First Appellate Authority, Ld. AR submitted that, the assessee was operating in the rural areas of Gariyaband District of Chhattisgarh State and was unaware about the tax laws that once the order is served the only remedy available is filing of appeal before the First Appellate Authority. The assessee received the impugned penalty order on 26.02.2019, however had inadvertently continued filing return replies with the ITO(TDS), Raipur and pursuing before him, which has finally been responded by the Ld. AO and suggested to file an appeal before First Appellate Authority. Copy of letter dated 22.11.2022 issued by the ITO, advising the assessee that the matter is related to loss of revenue, an immediate action is required for recovery of

outstanding TDS/ TCS demand, however an appeal before the CIT(A), Raipur may be filed. The copy of the referred letter issued by ITO is extracted hereunder for the sake of clarity:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX
OFFICER, TDS
ITO (TDS),RAIPUR

To, DISTRICT PROJECT LIVELIHOOD COLLEGE SOCIETY GARIYABAND CHHATISGARH 34 DSDA COLLECTORED CAMPUS,GARIYABAND CHHATISGARH 493889,Chhattisgarh India		
TAN: JBPD03893B	Dated: 22/11/2022	DIN & Letter No : ITBA/COM/F/17/2022-23/1047568311(1)

Sir/ Madam/ M/s,

Subject: Recovery of outstanding TDS/TCS demand

Sub : Adjustment/deletion of demand - Regarding –

Ref: 1. Your letter no. 1283/DPLCS/TDS/2022-23 dated: 15/11/2022

Kindly refer to the above.

In this connection, it is informed that " your failure to furnish form 26A before the date of completion of proceedings u/s 201(1) & 201(1A) of the I.T. Act, 1961 had led the issue in raising the demand. Thus there is no mistake in the order and your application for deletion of demands cannot be considered in this office "

Since the matter is related to loss of Revenue, an immediate action is required. However, an appeal before the CIT(A), Raipur, may be filed, in case, you are not satisfied with the order issued from this office.

SUNIL KUMAR
ITO (TDS),RAIPUR

7. Ld. AR, taking support from the aforesaid letter of the Ld. AO dated 22.11.2022, submitted that the aforesaid facts confirm that the assessee was acting under Bonafide belief that the relief with respect to penalty order passed can be given by Ld. ITO, therefore, the assessee made its Bonafide request before the ITO, however as soon as the assessee was enlightened to file an appeal before the First Appellate Authority, necessary actions are taken and the appeal was filed before the Ld. Addl/JCIT(A), NFAC, on 23.01.2023. It was the submission that such factual details and assessee's conduct / action to search for the remedy shows that there was no intentional lapse on the part of assessee in delaying the filing of appeal, therefore, Ld. Addl/JCIT(A) was in gross error in dismissing the appeal of assessee without adjudicating the grounds of appeal against the interest of natural justice.

8. Ld. AR further submitted that the order of Ld. First Appellate Authority deserves to be set aside. Also, the Ld. AO defied the principle of natural justice by not allowing proper opportunity of being heard to the assessee and had treated the assessee as "assessee in default" within the meaning of Sec. 201(1A) and 201(1) of the Act on account of non-deduction of TDS without appreciating the facts of case properly. It was, therefore, the prayer by Ld. AR that the penalty imposed by the Ld. AO and sustained by the Ld. Addl/JCIT(A) is liable to be deleted.

9. Per contra, Ld. Sr. DR vehemently supported the order of revenue authorities below.

10. We have considered the rival submissions, perused the material available on record and the observations of Ld. Addl/ JCIT(A) while dismissing the appeal of assessee *in limine* on account of delay in filing of appeal. On perusal of the order of Ld. Addl/ JCIT(A), we observe that the admittedly, there was a delay of 1429 days in filing of appeal before the First Appellate Authority, as the appeal was supposed to be filed against the order u/s 201 dated 30.01.2019, served on assessee on 26.02.2019, within 30 days i.e., on or before 28.03.2019, however, the appeal was filed on 23.01.2023. Out of the total delay of 1429 days, relief of 699 days was granted by the Ld. Addl/ JCIT(A), considering the period from 15.03.2020 to 28.02.2022 is covered by the order of Hon'ble Supreme Court in the wake of Covid-19 pandemic vide *suo moto* writ petition (C) No. 3/2020 dated Jan 10, 2022. Even after excluding the limitation extended by Hon'ble Supreme Court there remains a further delay of 730 days, for which Ld. Addl/ JCIT(A) had not found any substance in the reasons explained by the assessee to condone the delay and therefore, had dismissed the appeal of the assessee on this count itself.

11. Advert to the overall facts and circumstances of the present case, it can be gathered that the assessee herein was under Bonafide belief that the penalty imposed upon it could be relaxed by the Ld. AO, therefore, was under follow up with the Ld. AO, however, the assessee was informed or made acquainted with the tax procedure to file the appeal on 22.11.2022 only by the Ld. AO and thereafter, the assessee had filed the appeal in the month of January 2023, therefore, the delay cannot be considered on account of careless, negligent and lackadaisical approach on the part of assessee. Also, the period during which such delay was occasioned is majorly covered by the extension granted by Hon'ble Apex Court on account of pandemic. Following the principle of natural justice and assessee's conduct to attempt for relief before the Ld. AO shows that the assessee was oblivious with the provisions of taxation law and as soon as it was enlightened, necessary steps for filing of appeal have been taken.

12. Considering the aforesaid facts and circumstances, in the interest of justice to adopt a liberal and justice-oriented approach as held by Hon'ble Apex Court in the case of **Vidya Shankar Jaiswal Vs ITO, Ward-2, Ambikapur, in Special leave Petition (Civil) Nos. 26310-26311/2024 vide order dated 31.01.2025**, we set aside the order of Ld. First Appellate

Authority, condone the delay of 1429 days and direct to re-adjudicate the appeal of assessee afresh after hearing the assessee on merits.

13. Needless to say, the assessee shall be provided with reasonable opportunity of being heard in the set aside appellate proceedings, to which the assessee as conceded before us, is directed to comply proactively, failing which the issues may be decided within a reasonable time, in accordance with the mandate of law.

14. In result, the appeal of assessee in ITA No. 271/RPR/2025 is **allowed** for statistical purposes.

15. As we have allowed the appeal of the assessee in ITA No. 271/RPR/2025, after condoning the delay in filing of appeal, by setting aside the impugned order passed by Ld. Addl./ JCIT(A) to decide the appeal of the assessee afresh, on its merits. Accordingly, in the remaining two appeals i.e., ITA No. 272 & 273/RPR/2025, having common issues, facts and circumstances, assailed against the similar orders, we condone the delay of 1430 days involved in filing of the appeal therein and restore the matter back to the file of Ld. Addl/ JCIT(A), following the same analogy and decision as we have observed in ITA No. 271/RPR/2025.

16. In combined result, all the aforesaid appeals of the assessee i.e., ITA No. 271 to 273/RPR/2025 are **allowed for statistical purposes.**

Order pronounced in the open court on 10/07/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक Dated 10/07/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- District Project Livelihood College Society
2. प्रत्यर्थी/ The Respondent- ITO(TDS), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur