

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **690/Chny/2025**
निर्धारण वर्ष / Assessment Year: **2009-10**

Vinjimur Chellappan Ram, No.78, "Sri Chakram" Ramachandran Street, Jafferkhanpet, Chennai – 600 083.	vs.	Deputy Commissioner of Income Tax, Non Corporate Circle 17(1), Chennai.
[PAN: AJQPR-2586-R] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Mr. K. Srinivasan, C.A.
प्रत्यर्थी की ओर से/Respondent by : Ms. Pryati Sharma, JCIT

सुनवाई की तारीख/Date of Hearing : 03.06.2025
घोषणा की तारीख/Date of Pronouncement : 15.07.2025

आदेश / O R D E R

PER S. R. RAGHUNATHA, AM:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax, Appeal, Addl. /JCIT (A)-8, Mumbai, for the assessment year 2009-10, dated 10.01.2025.

2. The grounds raised by the assessee are as follows:

Ground No. 1-The Opportunity of being heard was not given to your Appellant.

1. Your Appellant is agitating only one issue.

Your Appellant was not given an opportunity of being heard. Hence the order of CIT (A) is opposed to principles of natural justice and deserves to be set aside. Your appellant prays that CIT (A) be directed to take on record your appellant's appeal and dispose of the same on merits as per the provisions of Law.

2. Your Appellant filed Written Submissions before Learned CIT (A) on January 06, 2025 in response to the Notice Vide Din ITBA/APL/F/APL_1/2024-25/1071791712 (1) dated 02/012025

Taking on record the written submissions of appellant is not equal to giving Opportunity of being heard vide case law below:-

Sukhvinder pal Singh Vs. ITO ITA NO, 7463/DEL/2019 [ITAT, Delhi]

"It is well settled that the mere making available of the written submissions by an assessee cannot be unilaterally so interpreted to mean that right to be heard has been waived off. Principles of natural justice mandate that a fair and effective opportunity of being heard is provided. Right to be heard forms the bedrock of the cluster of principles of fair hearing which go by the nomenclatures of principles of natural justice.

3. The Learned CIT (A) passed an Order Under section 250 dated January 10,2025 Vide DIN: ITBA/APL/S/250/2024-25/1072061122 (1) without giving an Opportunity of being heard to your Appellant and dismissed the Appeal on ground that it was filed beyond statutory time limit
4. In the impugned order, the CIT (A) has failed to consider sympathetically the facts which prevented your Appellant to file the Appeal on time.
5. Your Appellant is a Civil Aviation Pilot and he had to fly to various places from Chennai which is his home town. His job prevented him from taking suitable timely action to file the appeal on time.
6. Your Appellant should have filed the Appeal on or before October, 21,2024 ie one month from the Demand Analysis and Recoverability Report of September 20, 2024.

The actual date of filing of Appeal was November 28, 2024 resulting in a delay of 38 days.

7. The CIT (A)'s stand is that your appellant must have noted the demand in the Intimation under section 143 (1) (a) dated October 20, 2010.

Accordingly his view is that the appeal filing is delayed by 5122 days.

8. Your Appellant at the distance of time is not sure whether intimation Uls 143 (1) served or not
9. As submitted in the preceding para your Appellant was frequently flying as a commercial pilot outside Chennai.
10. Your Appellant's frequent absence from Chennai as a commercial pilot was the cause of delay
11. Even if the delay amounts to 5122 days as per CIT (A)'s view, the delay must be condoned.

*It has been held in **N Balakrishnan Vs M Krishnamurthy AIR 1998 SC 3222** that Rules of Limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek remedy promptly.*

12. Your Appellant requests the Honourable Bench to condone the delay and direct the CIT (A) to take the Appeal on record and dispose it on grounds of merits mentioned in the Grounds of Appeal [before CIT (A)]

In the following cases huge delays in filing appeal before CIT (A) have been condoned

(1) *Ram Nath Sa And Others vs Gobardhan San And Others [AIR 2002 SC 1201] [delay about 3 years].*

(2) *Ram Bharose Sharma, Jaipur vs ITO, Jaipur [ITA NO.1066/JP/2016,ITAT Jaipur] [delay of 565 days]*

(3) *Demi Realtors, Hyderabad vs DCIT, Circle-6(1) [ITA NO.156/HYD/2023 ITAT, HYD] [delay of 1784 days]*

(4) *Nageshwara Charitable Trust Vs ITO [ITA NO 129/Nag/2023, ITAT, Nagpur] [delay of 405 days]*

(5) *Parampreet Kaur Vs ITO [2025] 122 ITR (Trib) 14 (Amritsar)*

Relief Claimed

*Your Appellant requests that the Honourable Bench to condone the delay and direct the CIT (A) to take the appeal on record and dispose it on grounds of Merits mentioned in the Grounds of Appeal submitted before CIT (A).
2010*

In SUM,

Your Appellant submits that delay in filing Appeal irrespective of number of days involved should be condoned when the delay is not malafide, dilatory and intentional.

Your appellant craves leave to add, amend and / or vary the grounds of appeal before or during the time of hearing.

3. The brief facts of the case are that the assessee is an individual was working as a Commercial Air Pilot for Deccan Aviation limited (Later known as Kingfisher Airlines Limited) during the previous year 2008-19(A.Y.2009-10) and filed his return of income in July 2009 by declaring a total income of Rs.22,53,677/-. The employer had deducted tax at source from salary of Rs.6,94,298/-, however the employer did not issue the TDS certificate in Form 16 for the same. The employer issued a statement of tax deducted on monthly basis along with the salary pay slip and based

on the same the return of income filed claiming a refund of Rs.35,908/-. The demand raised by processing the return of income u/s.143(1) of the Income Tax Act, 1961 (in short "the Act") for want of TDS (Form 16) certificate. However, the intimation passed u/s.143(1)(a) was not served to the assessee.

4. Aggrieved by the intimation u/s.143(1)(a) of the Act, the assessee preferred an appeal before the Id.CIT(A), NFAC, Delhi on 28/11/2024. The Id.addl/JCIT(A)-8, Mumbai found that the appeal is filed after the lapse of 5,122 days and hence dismissed the appeal of the assessee stating that there was no proper justification for late filing of the appeal by passing an order dated 10.01.2025.

5. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

6. The Id.AR for the assessee submitted that the assessee filed his return of income on 07.07.2009 by claiming a refund of Rs.35,908/-. The department is stating that the intimation u/s.143(1) has been passed on 20.10.2010 by rejecting the TDS claimed in the return of income, as non-payment by the employer and hence raised a demand of Rs.7,94,610/-. The Id.AR filed a paper book of 10 pages consisting of the copy of the ITR acknowledgement, response filed for outstanding demand on 13.03.2015 as disagreed with demand, Physical appearance on 22.02.2018, letter filed with the DCIT, Non-corporate circle-17(1) for non-receipt of intimation u/s.143(1), physical appearance on 20.09.2024, Grievance raised on 15.11.2024 and response from the department on 07.03.2025 with regard to grievance as resolved without providing intimation till today. Therefore, the Id.AR submitted that the assessee was never received the intimation to file the appeal before the Id.CIT(A) and was trying with available alternative remedies to obtain the same.

7. Further, the Id.AR submitted that even today the intimation has not been provided by the department to the assessee. However, the assessee on receipt of recovery notices from the department as well as no response for all the remedies, filed an appeal before the Id.CIT(A) against the intimation referred by the revenue on the basis of demand notices with a delay of 5,122 days along with the condonation application duly explaining the above details. However, the Id.CIT(A) has dismissed the appeal without condoning the delay, though the delay in filing the appeal by the assessee was not intentional and due to the reasons beyond the control of the assessee. Therefore, the Id.AR prayed for setting aside the order of the Id.CIT(A) by condoning the delay in filing the appeal before the Id.CIT(A).

8. Per contra, the Id.DR submitted that the assessee should have filed the appeal atleast when the recovery of notice based on intimation u/s.143(1) was received in the year 2015, instead of filing the appeal on the same basis with a huge delay of 5,122 days and hence and prayed for dismissing the appeal.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The fact with regard to the impugned dispute are that the assessee has filed an appeal before the Id.CIT(A) with a delay of 5,122 days against the intimation u/s.143(1) for the A.Y. 2009-10. According to the assessee, the intimation u/s.143(1) of the Act dated 20.10.2009 which has been purportedly issued by the revenue was never received by the assessee till today. The department also has failed to place on record a copy of the intimation u/s.143(1) of the Act even before us. On perusal of the submissions, we find that the assessee was pursuing with the alternative remedies to obtain the intimation time and again

from the department. We also find that the grievance raised by the assessee has also been intimated as resolved, without providing an intimation u/s.143(1).

10. In the present facts and circumstances of the case, we are of the considered view that in the interest of justice it's a fit case to condone the delay in filing the appeal before the Id.CIT(A). We find the reasons for delay given by the assessee is sufficient cause. Hence, we set aside the impugned order of the Id.CIT(A) and direct the Id.CIT(A) to proceed with appeal proceedings denovo on merit in accordance with law.

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

Order pronounced in the open court on 15th July, 2025 at Chennai.

Sd/-
(जॉर्ज जॉर्ज के)
(GEORGE GEORGE K)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 15th July, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF