

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकर अपीलसं./I.T.A.No.305/Viz/2025
(निर्धारण वर्ष/ Assessment Year:2012-13)

Syed Irfan Hazari, Guntur. PAN : AANP16820R	Vs.	The Income Tax Officer, Ward – 2(3), Guntur.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N. Hari, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	10.07.2025
घोषणा की तारीख/ Date of Pronouncement	:	18.07.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the assessee is directed against the order passed by the Addl/JCIT(A)-10, Delhi, dated 24.03.2025, which in turn arises from the order passed by the Assessing Officer (for short "A.O.") under Section 144 of the Income Tax Act, 1961 (for short "the

Act”) dated 30.12.2019 for A.Y. 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
2. The order of the learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal in limine by refusing to condone the delay of 32 days in filing the appeal.
3. Any other ground that may be urged at the time of appeal hearing.

3. Succinctly stated, the A.O., based on information received from the Income Tax Officer (Investigation), Unit-4, Vijayawada, vide his letter dated 04.02.2019, observed that the assessee had made cash deposits of Rs. 5,00,000/- on 12.01.2012 and Rs.7,00,000/- on 04.03.2012 in his bank accounts, but had failed to come forth with any satisfactory explanation regarding the peak cash deposits appearing in his bank account. As the assessee had not filed his return of income for the year under consideration, i.e., A.Y. 2012-13, therefore, the A.O. initiated proceedings under Section 147 of the Act. Notice under Section 148 of the Act dated 26.03.2019 was issued to the assessee.

4. Ostensibly, the assessee neither complied with the notice issued under Section 148 of the Act dated 26.03.2019, nor filed his return of income, or furnished the requisite information, as was called for by the A.O. by issuance of notice under Section 142(1) of the Act. Considering

the aforesaid factual position, the A.O. issued notice under Section 133(6) of the Act to the banks, calling for the statements of the bank accounts of the assessee for the subject year. In the meantime, the assessee filed his return of income for A.Y. 2012-13 on 14.11.2019, declaring a net taxable income of Rs.67,840/-. The A.O., on a perusal of the return of income filed by the assessee, observed that he had claimed to have sold a flat during the subject year, against which he had stated to have suffered a loss of Rs. 2,71,544/-. Also, it was the claim of the assessee that he was engaged in the business of repairs and sale of spectacles and, in support of the same, had produced before the A.O. his books of accounts, bills, vouchers, etc.

5. On a perusal of the return of income/statement of income filed by the assessee, the A.O. observed that he had disclosed his business income at Rs. 1,78,432/- (against sales of Rs. 6,80,915/-) that was claimed to have been derived from his business of repairs and sale of spectacles. On being queried about the source of cash deposits made in his bank accounts during the subject year, it was the claim of the assessee that the same were sourced out of viz., (i). his business sale proceeds; and (ii). the sale consideration of the property.

6. The A.O., holding a firm conviction that the cash deposits of Rs. 35.73 lacs (supra) were the sale proceeds of the assessee's business of sale of spectacles, determined the income element on the same by adopting the profit percentage that was disclosed by him in his statement of income under Section 44AD of the Act, i.e., 22.49%, and worked out the same at Rs. 8,03,635/- [22.49% of Rs. 35,73,300/-]. Accordingly, the A.O. substituted the business income, as against that disclosed by the assessee, by the aforementioned amount of Rs. 8,03,635/- (supra).

7. Apart from that, the A.O. observed that the assessee, during the subject year, had sold a flat vide sale deed, dated 30.11.2011 for a consideration of Rs.17,40,000/-, against which he had claimed to have suffered a long-term capital loss of Rs.2,71,544/-. On a perusal of the computation of capital loss, the A.O. observed that the assessee had, against the aforesaid sale consideration, claimed as deduction viz., (i). indexed cost of acquisition: Rs.15,79,083/-; and (ii). indexed cost of improvement: Rs.4,32,431/-. Although, the assessee had substantiated the cost of purchase of the subject property based on registered purchase document No. 18150, dated 30.11.2016, but as he had not furnished any proof in support of the indexed cost of improvement,

therefore, the A.O. disallowed his claim for deduction of the indexed cost of improvement and reworked the long-term capital gain at Rs.1,60,917/-

8. Accordingly, the A.O., vide his order under Section 144 r.w.s. 147 of the Act, dated 30.12.2019, assessed the income of the assessee at Rs. 9,74,470/-.

9. Aggrieved, the assessee carried the matter in appeal before the CIT(A).

10. As the appeal filed by the assessee before the CIT(A) involved a delay of 32 days, the CIT(A), not finding favour with the claim of the assessee that the delay had occasioned due to his ill health during the relevant period, dismissed the appeal on that count itself. For the sake of clarity, the observations of the CIT(A) are called out as under :

“2. Decision:.

2.1 As mentioned at the outset, against the assessment order u/s 144 r.w.s. 147 of the Act dated 30.12.2019, the appellant filed an appeal vide Form No.35 dated 07.03.2020. From the date of service of the order i.e. 04.01.2020 it is seen, that there is a delay of 32 days in filing appeal. The appeal should have been filed within 30 days i.e. by 03.02.2020 from service of Order / Notice of Demand as per Section 249(2) of the Act. In column no. 14 of Form No. 35, the appellant has admitted to the delay in filing and has given the reason for condonation of delay which is as under...

"Condonation of delay for filing the appeal: The petitioner humbly submits that he suffered with ill health due to Jaundice and typhoid and prays to allow the appeal.

2.2 After considering the assessee's reasons, this office is not satisfied that there was sufficient cause for the delay in filing the appeal as there is a delay of 32 days in filing appeal. While some delay may be condoned, if the assessee provides any reasonable and sufficient cause for the delay. In the instant case the assessee has failed to provide any reasonable and sufficient cause for delay.

Granting relief in such cases would set a precedent where taxpayers ignore statutory timelines and later seek condonation of delay without giving any reasonable and sufficient cause for the delay.

2.3 There is a statutory limit prescribed for filing of appeal in the Act. The invocation of the power to condone any delay, major or minor, in observing such time limit is possible only on the satisfaction of the Addl./JCIT (Appeal) regarding the appellant having been unable to file the appeal in time due to sufficient cause. The appellant cannot be entitled to automatic admission of appeal filed after the time limit. This is not a substantiated and valid argument. Ignorance of law or of proceedings under law cannot be taken as an excuse. The onus lay on the appellant to keep track of the email and proceedings in his case. Digital or e-proceedings are the norm of the day now in this modern era and proceedings in the department have been digitized and are carried out through digital medium. The act of the appellant in not filing appeal within time and not having any credible reason by way of sufficient cause for delay in filing cannot be condoned.

2.4 The statute clearly lays down the timeline for filing appeal. Any deviation from the same can be condoned only if there is presence of sufficient cause for the same as found by the adjudicating authority. The unsubstantiated reason given by the appellant for delay is not found to fall within the four corners of 'sufficient cause' for the same, thereby rendering it ineligible for condonation and admission. Thus, this brief and unsubstantiated as well as invalid reason given by the appellant for delay of 32 days is not found to be sufficient cause for the same.”

11. The assessee, being aggrieved with the order of the CIT(A), wherein his appeal was dismissed in limine, has carried the matter in appeal before us.

12. Shri G.V.N. Hari, the learned Authorized Representative (for short “Ld.AR”) for the assessee, at the threshold of hearing of the appeal,

submitted that the CIT(A) had grossly erred in law and on the facts of the case in declining to condone the delay of 32 days, which, for bonafide reasons had crept in at the stage of filing of the appeal before him. Elaborating on his contention, the Ld. AR submitted that as the assessee during the relevant period was taken unwell with jaundice and typhoid, therefore, the same had resulted in a delay on his part in filing the appeal before the CIT(A). The Ld. AR submitted that though the assessee had brought the aforesaid fact leading to the delay in filing of the appeal to the notice of the CIT(A), but, he without giving any cogent reason declined to condone the same and dismissed the appeal. Carrying his contention further, the Ld. AR had drawn our attention to an affidavit of the assessee, dated 25.07.2025 along with a copy of medical prescription, dated 01.07.2020, wherein it was deposed by him that the assessee, during the relevant period, i.e., in the last week of January, 2020, was suffering with jaundice and was advised to take bed rest for six weeks. The Ld. AR submitted that as the assessee had recovered in the first week of March, 2020 and had started to attend to his normal daily affairs, therefore, he, involving no further loss of time, had filed the appeal before the CIT(A) on 07.03.2020. The Ld. AR submitted that as the delay in filing of the present appeal was for bonafide and justifiable reasons, therefore, the CIT(A) in all fairness

ought to have condoned the same instead of dismissing the appeal on the ground of limitation.

13. Per contra, Dr. Aparna Villuri, the learned Senior Departmental Representative (for short “Ld. DR”) relied upon the orders of the lower authorities. The Ld. DR submitted that as the assessee had failed to file the appeal before the CIT(A) within the prescribed period, and had also not justified the delay of 32 days based on any irrefutable documents/ material evidence, therefore, the CIT(A) had rightly dismissed his appeal on the ground of limitation.

14. We have thoughtfully considered the contentions advanced by the Ld. AR on the issue pertaining to the delay involved in filing of the appeal by the assessee before the CIT(A).

15. At the threshold, we may herein observe that the assessee, in the course of the proceedings before the CIT(A), had specifically stated in Column No. 14 of “Form No. 35” that, as during the relevant period he was suffering from ill health due to jaundice and typhoid, therefore, for the said reason the filing of the appeal was delayed by a period of 32 days. However, we find that the CIT(A) had declined to condone the delay on the ground that the assessee had failed to come forth with any reasonable and sufficient cause to explain the same.

16. We have thoughtfully considered the view taken by the A.O. and are unable to persuade ourselves to concur with the same. We, say so, for more than one reason i.e. (i). that the delay of 32 days involved in filing of the appeal by the assessee cannot be brought within the meaning of an inordinate delay in filing of the appeal; and (ii). that the “Affidavit” along with the supporting medical prescription, dated 01.02.2020 filed by the assessee reveals beyond doubt that he, during the relevant period, was suffering with jaundice and was medically advised a bed rest for six weeks. We are of the considered view that, as there were justifiable reasons for the delay of 32 days involved in filing of the appeal before the CIT(A), therefore, he ought to have adopted a justice oriented and a liberal approach and disposed of the appeal on merits instead of dismissing the same on the ground of limitation. Our aforesaid view that a justice-oriented and liberal approach should be taken while dealing with the application filed by an appellant seeking condonation of the delay in filing of the appeal is supported by the decision of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025**. The Hon'ble Apex Court while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the

declining of the condonation of delay of 166 days by the Income Tax Appellate Tribunal, Raipur Bench, had observed that a justice oriented and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay in filing the appeal. We thus, in terms of our aforesaid observations, condone the delay involved in filing of the present appeal.

17. Considering the aforesaid facts, we, in all fairness, direct the CIT(A) to condone the delay of 32 days involved in filing of the appeal before him and restore the matter to his file, with a direction to re-adjudicate the appeal *qua* the issues based on which the impugned assessment order passed by the A.O. under Section 144 r.w.s. 147, dated 30.12.2019 has been assailed before him. Needless to say, the CIT(A) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at liberty to substantiate his contentions based on fresh documentary evidence, if any.

18. Resultantly, the appeal of the assessee is allowed for statistical purposes, in terms of our aforesaid observations.

Order pronounced in the Open Court on 18th July, 2025.

Sd/- (एस. बालकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
--	--

Hyderabad, dated 18.07.2025.

****#TYNM/sps**

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Syed Irfan Hazari, D.No.15-3-6, Mangalagiri Road, Israilpet, Guntur – 522001.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Ward 2(3), Guntur.
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam