

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री विजय पाल राव, उपाध्यक्ष, एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No. 479/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2015-16)**

Ganesh Transports Flat No. 504, Umamaheswari Towers West Ibrahimpatnam Vijayawada – 521456 Andhra Pradesh [PAN:AAIFM6717G] (अपीलधर्ती/Appellant)	Vs.	Income Tax Officer – Ward – 1(1) CR Building, 1 st Floor Annex M.G. Road, Vijayawada – 520002 Andhra Pradesh (प्रत्यर्ती/Respondent)
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**आयकर अपीलसं./I.T.A.No. 480/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2015-16)**

Ganesh Transports Flat No. 504, Umamaheswari Towers West Ibrahimpatnam Vijayawada – 521456 Andhra Pradesh [PAN: AAIFM6717G] (अपीलधर्ती/Appellant)	Vs.	Asst. CIT – Circle – 1(1) CR Building, 1 st Floor Annex M.G. Road, Vijayawada – 520002 Andhra Pradesh (प्रत्यर्ती/Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri MV Prasad, CA
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Aparna Villuri, Sr.AR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	17.07.2025
घोषणा की तारीख/Date of Pronouncement	:	25.07.2025

आदेश / O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. These appeals are filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal centre, Delhi [hereinafter in short “Ld.CIT(A)”] in quantum appeal vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1067423862(1) dated 08.08.2024 and against the penalty order under section 271(1)(c) of the Income Tax Act, 1961 (in short ‘Act’) vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067424264(1) dated 08.08.2024.

2. Briefly stated facts of the case are, assessee being a partnership firm did not file its return of income for the A.Y. 2015-16. The case was flagged under category of “Multi Year NMS” data and subsequently reopened under section 147 of the Act after obtaining prior approval from the appropriate authorities. Thereafter notice under section 148 of the Act was issued on 29.03.2021 through e-proceedings. Assessee has not responded to the notice under section 148 of the Act nor filed return of income as required. Subsequently, notice under section 142(1) of the Act was issued on various dates. Assessee failed to comply with any of the notices issued under section 142(1) of the Act. Thereafter the Ld. AO issued show-cause notice under section 144 of the Act dated 01.03.2022 through e-proceedings requiring the assessee to show-cause why the assessment should not be completed under section 144 of the Act due

to non-compliance by the assessee. Ld. Assessing Officer [hereinafter in short "Ld. AO"] observed that as per Form 26AS assessee has received an amount of Rs.4,97,72,941/- as transport charges from Penna Cement Industries Limited and also received an interest of Rs. 3,490/- from Zuari Cement Limited. Since the assessee failed to respond to any of the notices Ld. AO framed the assessment by estimating 8% of the gross receipts and accordingly determined the income at Rs.39,85,330/-.

3. On being aggrieved by the order of the Ld. AO, assessee filed an appeal before Ld. CIT(A) with a delay of 179 days. Ld. CIT(A) by relying on various judicial pronouncements did not consider the petition for condonation of delay, thereby dismissed the appeal of the assessee.

4. On being aggrieved by the order of the Ld. CIT(A), assessee filed appeals before us with a delay of 21 days. Assessee filed a condonation petition showing sufficient cause for the delay in filing the appeals before the Tribunal. Considering the facts and circumstances, we are of the opinion that the assessee has reasonable and sufficient cause for delay in filing the appeals by 21 days. Accordingly, we condone the delay and proceed to adjudicate the appeals on merits.

ITA No. 479/VIZ/2025 (A.Y. 2015-16) – Quantum Appeal

5. Assessee has raised following grounds of appeal: -

“1. The learned CIT (Appeals) is erred in facts and law while passing the order.

2. The Learned CIT(Appeals) is not justified in rejecting the plea of the appellant for condonation of delay in filing of appeal even though the appellant firm has valid and sufficient reasons for occurrence of such delay. The Learned CIT(Appeals) ought to have accorded a further opportunity of being heard before rejecting such plea in view of principles of natural justice.

3. The Learned CIT(Appeals) ought to have adjudicated the appeal on the facts of the case.

4. On the facts and circumstances of the case, the Learned Assessing Officer is not justified in arriving at taxable income of Rs. 39,81,835/-.

5. On the facts and circumstances of the case, the Learned Assessing Officer is not justified in estimating the income at 8% on the gross receipts from Penna Cement Industries Limited as per Form No.26AS even though profit derived on such receipts were already admitted in the hands of the proprietor Sri Vemulapalli Vijaya Ram Prasad vide PAN ADQPV2695B.

6. On the facts and circumstances of the case, the Learned CIT (Appeals) is not justified in not considering all the material evidences and Written Submissions uploaded by the appellant proving that all the business receipts were already declared and offered for taxation in the individual proprietor's hand.

7. Any other legal and factual ground that may be urged at the time of hearing of the Appeal.”

6. The contention of the Ld. Authorised Representative [hereinafter “Ld.AR”] is that assessee being a partnership firm was dissolved by way of dissolution deed dated 30.03.2014. Ld.AR submitted that since there are only

two partners to the firm, the retirement of one partner from the firm lead to the dissolution of the firm and the business was taken over by the existing partner in his capacity as proprietor. Ld.AR further pleaded that since the firm is dissolved the notice could not be responded and hence there is a delay of non-filing of appeal before Ld. CIT(A) for a period of 179 days. He also further submitted that the turnover appearing in Form 26AS was included in the proprietary business of the partner while filing the return of income in his individual capacity. He further submitted that the ledger extract disclosing the contract receipts from Penna Cement Industries Ltd is produced in paper book at Page No. 69. He therefore pleaded that one more final opportunity may be given to the assessee to substantiate the claim before Ld. CIT(A).

7. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that the assessee has failed to respond to any of the notices and Revenue Authorities are right in adjudicating the matter based on the data available in the Form 26AS of the assessee. He therefore pleaded that the order of the Ld. CIT(A) be upheld.

8. We have heard rival contentions and gone through the paper book and the dissolution deed filed by the assessee. The Ld. CIT(A) while dismissing the appeal of the assessee did not adjudicate the case on merits whereas dismissed the appeal of the assessee based on the delay in filing the appeal by 179 days. Considering the plea of the Ld.AR and also the facts and circumstances of the

instant case as submitted by the Ld.AR, we are of the considered view that one more final opportunity may be provided to the assessee and therefore we direct the Ld. CIT(A) to decide on the petition for condonation of delay of 179 days and if found sufficient cause is shown by the assessee, adjudicate the case on merits in accordance with law. Thus, Grounds raised by the assessee are disposed of for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

ITA No. 480/VIZ/2025 (A.Y. 2015-16) – Penalty Appeal

10. Assessee has raised following grounds of appeal: -

“1. The learned CIT (Appeals) is erred in facts and law while passing the order.

2. The Learned CIT(Appeals) is not justified in dismissing the appeal filed by the appellant on the penalty levied u/s.271(1)(c) of the Act of Rs.13,00,000/- for concealment of particulars of income.

3. The Learned CIT(Appeals) is not justified in rejecting the plea of the appellant that the gross received were already disclosed in the ITR filed for individual on the ground that no corroborating evidences has been submitted even though the same was filed along with the written submissions made on the quantum appeal.

4. On the facts and circumstances of the case, the Learned Assessing Officer is not justified in levying the penalty treating the income estimated by Assessing Officer as concealed income even though such income was disclosed in the hands of the proprietor of the erstwhile firm.

5. On the facts and circumstances of the case, the Learned Assessing Officer is not justified in levying the penalty for concealment of particulars of income on the estimated income.

6. Any other legal and factual ground that may be urged at the time of hearing of the Appeal.”

11. With respect to penalty appeal, which is consequential to the quantum appeal, we are of the view that since the quantum appeal has been remitted back to the file of Ld. CIT(A) to decide the case afresh including the condonation of delay, penalty order under section 271(1)(c) of the Act does not have legs to stand and accordingly grounds raised by the assessee are allowed.

12. In the result, appeal of the assessee is allowed.

13. To sum-up, the appeals are adjudicated as follows: -

Sl.No.	ITA No.	Result
1.	ITA No. 479/VIZ/2024	Allowed for statistical purposes.
2.	ITA No. 480/VIZ/2024	Allowed.

Order pronounced in the open court on 25th July, 2025.

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

उपाध्यक्ष/VICE PRESIDENT

Dated: 25.07.2025

Giridhar, Sr.PS

Sd/-

(एस बालाकृष्णन)

(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Ganesh Transports**
Flat No. 504, Umamaheswari Towers
West Ibrahimpatnam
Vijayawada – 521456
Andhra Pradesh
2. राजस्व/ The Revenue : **(i) Income Tax Officer – Ward – 1(1)**
CR Building, 1st Floor Annex
M.G. Road, Vijayawada – 520002
Andhra Pradesh
(ii) Asst. CIT – Circle – 1(1)
CR Building, 1st Floor Annex
M.G. Road, Vijayawada – 520002
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam