

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No. 702/Ind/2024
Assessment Year: 2018-19

Prathmik Krshi Shak Sahkari Sanstha Maryadit, Khatedakala, Sarrah, Distt-Sarrah, Betul	<u>बनाम/</u> Vs.	NFAC Delhi
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AACAP7241F		
Assessee by	Shri Soumya Bumb, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.07.2025	
Date of Pronouncement	28.07.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 16.04.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 17.03.2023 passed by learned Assessment Unit of Income-tax Department ["AO"] u/s 147 r.w.s. 144 & 144B of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. Ld. AR for assessee submitted that the impugned order was passed on 16.04.2024 but the same came to the knowledge of assessee on 17.07.2024 and therefore the assessee has mentioned the "date of service" as "17.07.2024" in Form No. 36. He submitted that the assessee filed appeal on 18.09.2024 which is within the statutory time period but, however, as a matter of abundant caution, the assessee has also filed a condonation-application supported by an affidavit. The assessee's application is scanned and re-produced below:

APPLICATION FOR CONDONATION OF DELAY IN FILING OF APPEAL

The Assistant Registrar
Income tax Appellate Tribunal, Indore Bench
Indore

**Re: PRATHMIK KRISHI SHAKH SAHKARI SANSTHA
MARYADIT, KHATEDAKALA**

PAN: AACAP7241F

Assessment Year 2018-19

**Sub: Request for condonation of delay in filing the
appeal against order under Section 250 of the Income
tax Act, 1961 "the Act"**

Most Respectfully sheweth,

The Appellant is a society in a remote and small village of Khatedkala in the district of Betul. For the year under consideration the appeal was filed before CIT(A) which was filed vide Form 35 dated 06.04.2023. In Form 35 it was specifically mentioned that the notices not to be sent on the email id.

However the notices and order was sent on email id asaassociates01@gmail.com which belongs to the erstwhile counsel of the appellant society.

The order dated 31.10.2023 was not received by the Appellant since it was served on the mail id of the erstwhile counsel of the Appellant.

Therefore from the date of order there is a technical delay of 90 days. However since the order was never received by the Appellant therefore there is in fact no delay from the receipt of order.

It is submitted that noticing the appeal order sent to the email of erstwhile counsel inspite of mention of the fact that the notice shall not be communicated on mail the order may not be treated as served to the Appellant. The Appellant is under the bonafide belief that no action has been taken on its appeal and the same is pending since no physical intimation was served to it. Attention is invited to the decision in case of **Daujee Abhushan Bhandar (P.) Ltd vs. UOI [2022] 136 taxmann.com 246 (Allahabad)** wherein the Hon'ble High Court has held that mere uploading on portal does not amount to service and issue of an order and that point of time of issuance is time when a digitally signed notice in form of electronic record is entered in computer resources outside control of originator, i.e., assessing authority. However in the instant case the same never happened and due to same the Appellant was under bonafide belief that the reprocessing request is pending.

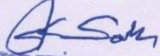
In view of above it is submitted that the stated delay of 90 days is technical in nature since the order was not served physically. Be that as it may the Appellant submits that the impugned delay being attributable to technical reason of non service of intimation and bonafide belief of

Appellant is prayed condoned. I would request your honours kindly to condone the same and entertain the impugned appeal on merits.

The Appellant relies on the decision of the Apex Court in the case of **Collector, Land Acquisition v. Mst. Katiji AIR 1987 SC 1353** where it is laid down that in such matters, a liberal approach is adopted as ordinarily a litigant does not stand to benefit by lodging an appeal late. It has been further laid down that substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. [Para 11]

In view of above it is prayed that the delay be condoned and the appeal be admitted.

For this act of kindness, as duty bound, shall ever pray.


संस्था प्रबंधक
Y
सह. सोसायटी मर्या. (बी-पैक्स)
खतेडाकला रं.नं.-696

Authorised Signatory

3. Ld. AR iterated the explanation given by assessee in the above application and submitted that due to non-receipt of notices of hearing as well as impugned order, the assessee could not represent its case before CIT(A) and there occurred delay of about 3 months in filing this appeal. Ld.

AR very humbly submitted that there is no lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He further submitted that the sole reason of delay is as explained in the condonation-application. He submitted that there is "sufficient cause" for delay and hence the delay should be condoned.

4. Ld. DR for Revenue left the matter to the wisdom of Bench without raising any objection.

5. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in ***Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387*** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the facts of case, the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

6. Ld. AR next submitted that the orders of both of the lower authorities are ex-parte. He referred a table noted by AO in Para No. 2 titled "Details of Opportunities given" and submitted that in Column No. 4 of the table titled "assessee received (yes/no)", the AO has himself mentioned "No" against all notices issued by AO, thus the AO himself admits that none of the notices sent by him was received by assessee. Ld. AR submitted that regardless of such mention by AO, it is a fact that none of the notices sent by AO was received by assessee and therefore the assessee could not make representation before AO which has led to passing of assessment-order u/s 144. Ld. AR requested that in present case, it would be most appropriate to remand this matter to the file of AO for a fresh adjudication. Ld. AR acknowledges that the assessee is ready and willing to make a proper representation before AO if an opportunity is given and hence prays that the present matter should be remanded to AO.

7. Ld. DR for revenue agrees with the prayer of Ld. AR but makes a request to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

8. Considering above submissions of parties; having regard to the principle of natural justice and also bearing in mind that no prejudice would be caused to revenue if the present matter is restored at the level of AO, we remand this matter back to the file of AO for adjudication afresh, at the risk and responsibility of assessee. The AO shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his

earlier order. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

9. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 28/07/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28/07/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore