

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3651 /Del./2024, A.Y. 2017-18

HCIL Comtel Pvt. Ltd. 1, Shivji Marg Western Greens N.H.-08, Gurgaon Road South West Delhi PAN: AACCH0293H (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle -11(1) New Delhi (Respondent)
Appellant by	Sh. Tavish Verma, Advocate	
Respondent by	Shri Om Prakash, Sr. DR	
Date of Hearing	28/07/2025	
Date of Pronouncement	28/07/2025	

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year ('AY') 2017-18 filed by the assessee is directed against the order dated 26.06.2024 of the Additional Commissioner of Income Tax (Appeals)/JCIT(A)-3, Ahmedabad [Addl. CIT(A)].

2. The assessee has raised following grounds of appeal: -

- "1. That on the facts and circumstances of the case and in law, the intimation order dated 18.01 2019 issued by under section 143(1) of the Income-tax Act, 1961 the Act) computing the total income of the Appellant for assessment year 2021-22 at Rs. 12,67,65,590 as against the returned income of Rs. 10,88,42,810, is illegal, bad in law and unsustainable.*

2. *That on the facts and circumstances of the case and in law, the CPC has erred in computing the disallowance made under section 43B of the Act amounting to Rs. 1.56.91.356 on account of bonus to employees without appreciating that the expenses were incurred during the year under consideration and were "actually paid before the due date of furnishing the Return of Income*
3. *That the assessing officer erred on facts and in law in not appreciating that the employee contribution was deposited before the due date of filing return of income as prescribed under section 139(1) and the same is, therefore, an allowable expenditure in terms of section 43B of the Act.*
4. *That on the facts and circumstances of the case and in law, the CPC has erred in computing the disallowance made under section 40A of the Act amounting to Rs. 19.53,400 without appreciating that the appellant has duly complied with the same.*
5. *That the appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of objection either before or during the course of the proceedings in the interest of natural justice."*

3. The relevant facts giving rise to this appeal are that the assessee, engaged in selling telecommunication equipment's including satellite-based telecommunication equipments and allied services, filed its Income Tax Return (ITR) on 30.11.2017 declaring income of Rs.10,88,42,810/- under normal provisions of the Income Tax Act, 1961 ('Act') and income of Rs.7,85,51,587/- under section 115JB of the Act. The ITR was processed under section 143(1) of the Act after making disallowances of Rs.1,56,91,356/- on account of bonus to employees and Rs.19,53,400/- on account of provision for gratuity were made under section 43B and 40A(7) of the Act. Aggrieved, the assessee filed rectification application under section 154 of the Act well in time. Later after 4 years and 07 months, the assessee filed first appeal against the processing order under section 143(1)

of the Act. However, the Ld. CIT(A) did not condone the delay and dismissed the appeal as under:

“7.1 First consider the condonation of delay filed by the assessee. The submissions of the appellant are considered but found to be not acceptable. In this case intimation order u/s 143(1) was passed on 18.01.2019 and rectification application u/s 154 was filed by applicant on 04.03.2019. The applicant has filed appeal on 13.09.2023 after 4.5 years of filing of rectification application. Appellant should have consulted the accountant first for delay in getting the order u/s 154 and appeal should have been filed first. Being a responsible tax payer assessee should be more careful regarding filing the appeal. In this case, the due date of filing the appeal was 18.02.2019 and the appeal was filed on 13.09.2023. Thus, there is a gap of more than 4.5 years between the both dates.

7.3 Even the appellant has paid the appeal fee of Rs 1000/- on 06.09.2023 beyond the due date of filing of appeal which also proved that the fee payment has not been made before due date of filing of the appeal i.e. on 18.02.2019.

7.4 In absence of good and justifiable reasons for delay in filing the appeal, the appeal filed belatedly is held to be not maintainable and therefore, the same is not entertained and dismissed. This view is supported by the following decision / Judgement.

7.5 In this regard the decision of the Hon'ble Mumbai Tribunal in the case of Prashant Projects Ltd Vs DCIT (2013) 37 taxman.com 137 is significant which is in favor of revenue holding that by adopting a liberal view in condonation of delay is one of the guiding principles in the realm of belated appeals, but liberal approach cannot be equated with a license to the appeals at will-disregarding the time-limits fixed by the statutes.

7.6 Further, Hon'ble Apex court in the case of Vedabhai Alias Vaijyanatabai Baburao Patil Vs Shanta ram Baburao Patil 253 ITR798, It was held as follows-

"In exercising discretion under section 5 of the limitation Act, the Court should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may be arises and such case deserves a liberal approach

7.7 Further, ITAT Chennai in the case of JCIT Vs tractors and farm Equipment Ltd It was held as under-

"The delay cannot be condoned simply because the appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief., in granting the indulgence and condoning the delay. It must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence whatsoever the sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The Hon'ble Supreme Court in the case of Ramlal Vs Rewa coalfields AIR 1962 SC 361 has held that the cause for the delay in filing the appeal which by due care and attention could have been avoid cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, nor inaction, or want of bonafides can be imputed to the appellant a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clear hands."

7.8 In the case of Bijaya & Co. Vs ITO (198) 17itd 1021 (Hon'ble Calcutta ITAT) has passed the order in favor of revenue.

7.9 In view of the above discussions and decisions, the request for condonation of delay is rejected as the same is not maintainable in view of the provisions of Section 249(2) of the LT Act and therefore the appeal is dismissed.

Since the appeal has been found not maintainable as per discussion made in the preceding paras, therefore, no decision on merits on the grounds of appeal is given."

4. The Ld. Counsel drew our attention to the fact that the bonus of Rs.1,56,91,356/- and gratuity were paid well within the time before filing the ITR under section 139(1) of the Act; hence, these disallowances were not legally justified. The first recourse to address the grievance was raised vide the rectification application filed under section 154 of the Act well in time. However, the same was not disposed of years before filing the appeal before the Ld. CIT(A) even though proper follow-up done by the assessee

from time to time. Hence, the assessee filed appeal before the Ld. CIT(A). The Ld. Counsel submitted that the AO, at one end, had not decided the assessee's rectification application filed under section 154 of the Act for years and on the other hand, the Ld. CIT(A) had not condoned the delay in filing the appeal, which according to the assessee was last resort to address its grievance. The said appeal filed before the Ld. CIT(A) was to seek the justice; however, the same was dismissed as above. He prayed for setting aside the impugned order and remitting the matter back to the file of the CIT(A) after directing to the Ld. CIT(A) to condone the delay and to decide the appeal on merit. To which, the Ld. Departmental Representative ('DR') seemed in agreement.

5. We have heard both parties and have perused the material available on the record. We take note of the fact that the Ld. CIT(A) has dismissed the appeal without appreciating the facts in entirety. The appeal filed before the Ld. CIT(A) is a desperate attempt of the assessee to get its grievance properly addressed. According to us, the appeal filed before the Ld. CIT(A) is not a normal case but an exceptional one to get the justice. However, the same has not been appreciated in proper perspective by the Ld. CIT(A). We are refraining from making any comment on merit of the case. In view of the interest of justice in this peculiar case, we deem it fit to set aside the impugned order and remit the matter back to the file of the Ld. CIT(A) with direction to condone the delay and to decide each ground of appeal on

merit. The appellant assessee, no doubt, shall cooperate in remitted appellate proceedings.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in open Court on 28th July, 2025

Sd/-

**(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated: 28/07/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT/CIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI