

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

आयकर अपील सं./I.T.A.No.42/Viz/2025
(निर्धारण वर्ष/ Assessment Year:2017-18)

Bayye Chandrakumar, Nidadavole Mandal. PAN : AHYPB8700B. (अपीलार्थी/ Appellant)	Vs.	The Deputy Commissioner of Income Tax, Circle – 1, Rajahmundry. (प्रत्यर्थी/ Respondent)
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt. A. Aruna, Sr.A.R.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	21.07.2025
घोषणा की तारीख/ Date of Pronouncement	:	25.07.2025

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 Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 27.06.2023, which in turn arises from the order passed by the Assessing against the order passed by the Assessing Officer (for short "A.O.") under Section 143(3) of the Income Tax Act, 1961 (for short "the Act") dated 12.12.2019 for

A.Y. 2022-23. 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 learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal ex-parte without adjudicating the Grounds of Appeal.
3. The learned Commissioner of Income Tax (Appeals) ought to have deleted the addition of Rs.34,60,392 made by the assessing officer towards adhoc disallowance @ 10% of Hill Rock purchases of Rs.3,46,03,920.
4. The learned Commissioner of Income Tax (Appeals) ought to have deleted the addition of Rs.24,19,797 made by the assessing officer towards adhoc disallowance @ 10% of metal purchases of Rs.2,41,97,970.
5. Any other ground that may be urged at the time of appeal hearing.”

2. Succinctly stated, the assessee, who is engaged in the business of executing civil contracts, had e-filed his return of income for A.Y. 2017-18 on 31.10.2017, declaring an income of Rs.84,24,540/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Section 143(2) of the Act.

3. During the course of assessment proceedings, it was observed by the A.O. that as the purchase of Hill Rocks at Rs.3,46,03,920/- made by the assessee during the subject year, based on self-made vouchers, were not susceptible for verification, thus, on an ad-hoc basis, he disallowed 10% of the same and worked out an addition of Rs.34,60,392/-. Also, on a similar footing, the A.O. on an ad-hoc

basis disallowed 10% of the assessee's claim for deduction of purchase of metal of Rs. 2,41,97,970/- and worked out a consequential addition of Rs.24,19,797/-. Accordingly, the A.O., vide his order passed under Section 143(3), dated 12.12.2019, framed the assessment in the case of the assessee.

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

5. Ostensibly, as the assessee, despite having been afforded six opportunities, i.e. vide notices dated 24.12.2020, 13.04.2022, 22.07.2022, 01.03.2023, 11.05.2023, and 02.06.2023, failed to participate in the proceedings before the CIT(A), therefore, the latter held a firm conviction that he was not interested in prosecuting the matter and dismissed the appeal.

6. The assessee, being aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

7. Smt. A. Aruna, the learned Authorized Representative (for short "Ld.AR") for the assessee, at the threshold of hearing of the appeal, submitted that the present appeal involves a delay of 516 days. Elaborating on the reasons leading to the delay in filing of the appeal,

the Ld. AR had taken us to the petition filed by the assessee seeking condonation of the delay, dated 20.05.2025, along with supporting affidavit of even date. The Ld. AR submitted that though the assessee had filed the appeal against the order passed by the A.O. under Section 143(3), dated 12.12.2019, before the CIT(A) within the prescribed period i.e on 06.01.2020, but thereafter, he had opted for Vivad Se Vishwas Scheme, 2020. Elaborating on her contention, the Ld. AR submitted that the assessee was issued Form-1 and Form-2 under the aforesaid scheme on 09.12.2020 for settlement of the appeal under the scheme. It was further submitted that the Pr.CIT, Visakhapatnam, had thereafter issued Form No. 3 on 15.12.2020, determining the amount payable by the assessee under Vivad Se Vishwas Scheme. The Ld. AR submitted that as the assessee was unable to pool up the requisite funds for meeting out the aforesaid payment of tax demand under the scheme, therefore, he remained under a misconception that the same could validly be deposited by him along with the interest element for the delayed period. The Ld. AR submitted that as the assessee had opted for the Vivad Se Vishwas Scheme, therefore, for the said reason, he had lost track of the appeal that was filed before the CIT(A), which thus, had resulted to the failure

on his part to participate in the proceedings as and when the hearing of the appeal was fixed.

8. The Ld. AR further submitted that the assessee had filed the appeal before the CIT(A) on 06.01.2020, i.e. before the introduction of faceless scheme, wherein he had given his email account viz. bchandrasekhar007@gmail.com in Form No. 35. It was submitted by her that as the assessee is not a regular user of email and had remained under a mistaken belief that he would receive the notices intimating the fixation of the appeal by post, therefore, he had remained unaware of the notices which were dropped in the aforesaid email account that was provided in Form No. 35. Carrying her contention further, the Ld. AR submitted that the assessee learnt about the dismissal of his appeal only on 18.01.2025, when he was called upon by the Income Tax Officer for depositing the outstanding demand based on the assessment framed in his case. The Ld. AR submitted that the assessee on learning about the fact that his appeal had been dismissed by the CIT(A), therefore, involving no further loss of time, had taken the necessary steps, and filed the present appeal on 23.01.2025, which by the time involved a delay of 516 days.

9. The Ld. AR, based on the aforesaid facts of that had resulted to the delay involved in the present appeal filed before the Tribunal, submitted, that as the same had crept in not on account of malafide approach or lackadaisical conduct on the part of the assessee, but for bona fide reasons, therefore, the same, in all fairness, be condoned.

10. Per contra, Dr. Aparna Villuri, the learned Senior Departmental Representative (for short "Ld. DR") vehemently objected to the seeking of the condonation of the delay involved in the present appeal filed by the assessee. The Ld. DR submitted that as the delay involved in the present appeal was inordinate and the assessee had failed to come forth with any explanation justifying the same, therefore, the same does not merit to be condoned.

11. We have thoughtfully considered the contentions advanced by the learned authorized representatives of both parties *qua* the delay involved in the present appeal filed before us.

12. Admittedly, we find that there is an inordinate delay of 516 days involved in the present appeal filed by the assessee before us. Although, it is the claim of the assessee that he had initially opted for the Vivad Se Vishwas Scheme, 2020, which on account of unavailability of the requisite funds with him to meet the tax demand,

did not materialize, therefore, for the said reason, he had failed to keep track of the appeal that was filed before the CIT(A). Apart from that, the assessee had claimed that the failure to participate in the proceedings before the CIT(A) was due to the fact that though his Chartered Accountant had provided his email account i.e. bchandrasekhar007@gmail.com in Form No. 35, but he, not being a regular user of email account, remained under a mistaken belief that the notices intimating the fixation of the appeal would be received by post.

13. We have thoughtfully considered the aforesaid reasons given by the assessee and are unable to persuade ourselves to accept the same. Although it is *inter alia* claimed by the assessee that as he had opted for the Vivad Se Vishwas Scheme, 2020 and was issued Form No. 3, therefore, for the said reason, he had failed to keep track of the appeal before the CIT(A), we do not find any substance in the same. As the proceedings before the CIT(A) were spread over the period from 06.01.2020 to 22.06.2023 i.e. over a period of 3 ½ years, therefore, it is incomprehensible that the assessee, who had failed to deposit the outstanding tax demand under the Vivad Se Vishwas Scheme, 2020 in

the year 2021, would not have kept track of his appeal that was pending before the CIT(A).

14. Apropos the claim of the Ld. AR that as the assessee's counsel had, in the memorandum of appeal, i.e., Form No. 35, provided his email ID i.e. bchandrasedkhar007@gmail.com but the assessee, not being a regular user of email account, had remained under a bona fide belief that the notices intimating the fixation of the appeal would be served upon him by post, we are unable to subscribe to the same. We, say so, for the reason that once the assessee had, in Form No. 35, specifically provided his email ID and had opted that the notices/communications be sent on the said email account, therefore, he cannot be permitted to say that he was under a bona fide belief that the notice intimating the fixation of appeal would be served upon him by post.

15. We are of the firm conviction that as the assessee had delayed the filing of the present appeal by an inordinate delay of 516 days, not for any plausible explanation justifying the same, but for his casual approach and lackadaisical conduct, therefore, the same does not merit to be condoned. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Pathapati Subba**

Reddy (Died) by L.Rs. & Ors. Vs. The Special Deputy Collector (LA), Special Leave Petition (Civil) No. 31248 of 2018, dated 08th April, 2024, wherein the Hon'ble Apex Court based on a harmonious consideration of the provisions of law, had laid down a set of conditions on the touchstone of which the delay involved in filing of an appeal is to be looked into, as under:

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that

the conditions have been imposed, tantamounts to disregarding the statutory provision."

16. Before parting, we may herein observe that in case the delay involved in filing of the appeal would not have been inordinate and supported by justifiable reasons, then, the same, in all fairness would have been condoned. However, we observe that in the present case, not only the delay involved is inordinate, but the same is also not backed by any justifiable reason. We thus, based on our aforesaid deliberations, dismiss the appeal filed by the assessee on the ground of limitation itself.

17. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 25th July, 2025.

Sd/- (एस. बालकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER
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Hyderabad, dated 25.07.2025.

TYNM/sps

ITA No.42/Viz/2025
Bayye Chandra Kumar

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

1.	निर्धारिती/The Assessee	:	Bayye Chandrakumar, D.No.5-68, Settipeta, Nidadavole Mandal, West Godavari District.
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle – 1, Rajahmundry.
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