

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.388/RPR/2025

निर्धारण वर्ष / Assessment Year : 2013-14

Sushma Singh
H No. 17/1, Baisagarpara,
Baikunthpur, Koriya (C.G.)-497 335
PAN: DYRPS4354H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-Mahendragarh

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ved Prakash Shukla, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 05.08.2025

घोषणा की तारीख / Date of Pronouncement : 05.08.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 21.02.2024 for the assessment year 2013-14 as per the grounds of appeal on record.

2. At the very outset, it is noted that there is delay of 405 days in filing appeal for which, the assessee had filed condonation petition a/w. affidavit. For the sake of completeness, the relevant paras are extracted as follows:

- That, I am the Appellant in the above matter and am fully conversant with the facts of the case.
- That, the impugned order was served on 21/02/2024 and the delay in filing this appeal occurred due to health reasons of my daughter.
- That the delay is neither intentional nor deliberate, and I pray this Hon'ble Tribunal to condone the same in the interest of justice.
- That if the delay is not condoned, I shall suffer irreparable loss and be deprived of my right to appeal.

DEPONENT*Singh*

The assessee has also filed relevant doctor's prescription and medical certificates as annexures to the said affidavit. It was submitted by the the

assessee that delay in filing of the appeal had occasioned due to health reasons of her daughter.

3. The Ld. Sr. DR fairly conceded that there is no objection regarding condoning the said delay.

4. It is apparent and clear that delay caused are absolutely due to circumstantial reasons which were beyond the control of the assessee and there is no deliberate or malafide conduct brought on record before this bench by the revenue so to say that delay has been caused due to the assessee. Considering the entire facts on record and taking guidance from the judicial precedents in the cases of viz. (i) **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025;** (ii) **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025,** and (iii) **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025,** the said delay of 405 days is hereby condoned.

5. Coming to the merits of the matter, it is noted that the Ld. CIT(Appeals)/NFAC had dismissed the appeal of the assessee in limine on the ground of delay without adjudicating the matter on merits. It is interestingly noted that the Ld. CIT(Appeals)/NFAC writes at Para 5 of its

order that there is inordinate delay in filing of the appeal before it. However, the fact of the matter is emanating at Para 4.3 wherein it is stated as part of the fact that the assessee had filed appeal against order u/s. 144 of the Income Tax Act, 1961 (for short 'the Act') dated 28.12.2019 on 05.02.2020. However, the appeal was required to be filed within 30 days i.e. within 28.01.2019. Therefore, as it is observed that there is only delay of 7 days in filing of the appeal and it is highly improbable to refer to such delay as inordinate delay.

6. The **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)** has held that every appellate authority has to deal with the grounds on merits considering the documents available on record. The findings should be recorded as per the merits of the case and any matter cannot be dismissed in limine either for delay or for want of prosecution without dealing regarding the merits of such matter. Furthermore, the Act itself specifies in Section 250(4) & (6) of the Act. The Ld. CIT(Appeals)/NFAC needs to verify and conduct various examination of facts being his power co-terminus with that of the A.O and come to conclusion. The very action of the Ld. CIT(Appeals)/NFAC in dismissing the appeal in limine on the ground of delay itself is unjustified, arbitrary and bad in law. For the sake of completeness, the relevant extract of the aforesaid decision are culled out as follows:

“8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

7. Respectfully following the aforesaid judgment, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication on merits and the said delay of 7 days is hereby condoned. The Ld. CIT(Appeals)/NFAC shall comply with the principles of natural justice and pass order in terms with Section 250(4) & (6) of the

Act. At the same time, the assessee shall furnish relevant documentary evidence and submission representing the matter on merits before the Ld. CIT(Appeals)/NFAC.

8. As per the above terms grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in open court on 05th day of August, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 05th August, 2025.

SB, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur