

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 283/GTY/2024**  
**Assessment Year: 2018-19**

**Pawan Communications Private Limited,**

4<sup>th</sup> Floor, Part-II, Royal Arcade,

B Baruah Road,

Ulubari (Assam) - 781007

[PAN: AAACP9270C]

.....**Appellant**

**vs.**

**DCIT, Central Circle-2,**

**Guwahati**

NFAC, Income Tax Department,

Ministry of Finance, North Block,

Delhi - 110001

..... **Respondent**

**Appearances by:**

Assessee represented by : Uttam Kumar Borthakur, Advocate

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 30.07.2025

Date of pronouncing the order : 06.08.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. In this appeal, there is a delay of 211 days which has been requested to be condoned through an affidavit as under:

*"I Rishi Gupta (PAN ACMPG2685H), Son of Shri Raghbir Singh Gupta, aged about 57 (Fifty Seven) Years, resident of Abhay Chandra Dutta Lane, F A Road, Kumarpara, P.O. Guwahati-781001, Police Station: Bharalumukh in the district of Kamrup (Metropolitan), Assam, do hereby solemnly declare and affirm as follows:-*

*1. That I am a director of Pawan Communications Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at present*

at 4th Floor, Part-II, Royal Arcade, B.Baruah Road, Ulubari, Guwahati, in the district of Kamrup (Metropolitan), Assam PIN Code: 781007 and the said company is assessed under the provisions of Income Tax Act, 1961 ('Act' for short hereafter) under the Permanent Account Number AAACP9270C. Therefore, I am conversant with the Income Tax Matters of the said company and competent to swear this affidavit.

2. That the aforesaid company had preferred an appeal on 17.03.2022 under section 250 against an original assessment order dated 27.09.2021 passed under section 143(3) read with section 1448 of the Act in its case that was numbered as Appeal No. NFAC/2017-18/10102742. Such appeal was disposed of by the learned CIT(A), Central NER, Guwahati, Office of the Commissioner of Income Tax, Appeal, Income Tax Department, Ministry of Finance, Government of India ['CIT(A)' for short hereafter] on 18.03.2024 and the same was served by e-mail and uploaded in the registered account of the aforesaid company on the same day. The limitation for preferring an appeal under section 253 of the said Act before the learned Income Tax Appellate Tribunal [ITAT for short hereafter] expired on 17.05.2024. There is therefore a delay of about 211 (two hundred eleven) days or more till date in submitting the appeal before the said learned Tribunal.

3. That the aforesaid order under section 250 has caused serious prejudice to the above said company, and therefore, it intends to prefer an appeal before the learned ITAT now after the expiry of prescribed time limit on 17/05/2024. And for that purpose, I am required to furnish the reasons explaining the cause of the delay in preferring the appeal after the expiry of the aforesaid time limit by way of petition for condonation of delay, as supported by a duly sworn affidavit.

4. That the aforesaid delay in submitting the appeal u/s 253 has arisen because of sufficient cause, and the sequence of the events leading to the delay has been as described below:

(a) The memorandum of appeal was required to be submitted by 17.05.2024, i.e. within 60(sixty) days of receipt of the appeal under section 250 on 18.03.2024.

(b) However, on 21.03.2024, the said company received another Assessment Order for the same Assessment Year (A.Y. for short) 2018-19 under section 147 (pursuant to a search and seizure under section 132 of the Act) vide DIN & Order no.: ITBA/AST/S/147/2023-24/1063112122(1) wherein the assessed total income was determined at Rs. 18882165 by making addition of Rs 1483375 only under section 36(1)(va) of the Act. Against this subsequent assessment order the company had no reason to be aggrieved due to the fact that the department chose not to make any unacceptable additions in the latter assessment order under section 147 on account of the disallowances of Rs.5235247, which had been made under section 143(3) read with 1448 in the original Assessment Order dated 27.09.2021 that had been impugned before the learned CIT(A) in the Appeal no.: NFAC/2017-18/10102742. As the subsequent assessment order under section 147 for the same A.Y. 2018-19 was presumably in supersession of the earlier assessment order under section 143(3) r. w. s. 1448, which was impugned before the learned CIT(A), the said company, as advised, had the sanguine belief that no appeal was required to be filed and accordingly, it did not prefer any appeal within 60(sixty) days of 18.03.2024 i.e. within 17.05.2024.

(c) On 26.09.2024, the learned Assessing Officer ('AO' for short hereafter) issued a notice bearing DIN & Notice no. ITBA/COM/F/17/2024-25/1069148974(1) under

section 154 whereby he proposed to add back Rs. 4745025 to the assessed total income of Rs. 18882165 determined under section 147 vide order dated 21.03.2024 pursuant to the relief of Rs.490222 granted by the appellate order of the learned CIT(A) dated 21.03.2024 in respect of the original assessment order dated 27.09.2021. At the relevant time, the accounts department of the petitioner's group of companies was tied-up with tax audit works and could not attend to the said notice and furnished an adjournment application of 08.10.2024 just after the expiry of the extended time limit for furnishing Tax Audit Report for Assessment Year 2024-25. Thereafter, it was engrossed with works related to the furnishing of the returns of the group of companies till 15.11.2024.

(d) Soon thereafter on 27.10.2024, the learned AO issued a letter vide DIN & Letter no. ITBA/PNL/F/17/2024-25/1069973360(1) where he referred to the Show Cause Notice under 274 read with section 270A dated 27.09.2021 and the order of the learned CIT(A) dated 18.03.2024 to show cause as to why penalty should not be imposed under section 270A of the Act.

(e) In view of such turn of event, the petitioner sought advice from an advocate practising on the taxation side who usually looks after the appeal matters. But at the relevant time he was pre-occupied with various other pressing matters including preparations and submissions of abridged written synopses before the Honourable Gauhati High Court in writ petitions bearing W.P(C) no. 7104/2017 concerning the said company as well as W.P(C) nos. 7101/2017,7103/2017 and 7102/2017 related to the same group of companies. Such works were over only on 26.11.2024 and he could look into matter only on 27.11.2024. However, he had to leave Guwahati to Rishikesh, Haridwar etc., in the morning of 30.11.2024 for the purpose of pilgrimage, which program had been fixed much earlier. But, the said company had deposited the Appeal Fee under section 253 on 27.11.2024 vide challan no. 02259 and BSR: 0240020, as suggested by him.

(f) That the aforesaid Advocate has prepared the appeal documents as soon as he returned and the said company is now in a position to electronically upload the appeal.

5. That all the statements made in this affidavit are true to best of my knowledge and belief  
OATH

"I swear that this my declaration is true, that it conceals nothing, and that no part of it is false, so help me God."

And I sign this affidavit on this 13th day of December, 2024 at Guwahati."

1.1 Considering the contents of the said affidavit, the delay is hereby condoned and the appeal is admitted for adjudication.

2. The present appeal arises from the order under Section 250 of Income Tax Act, 1961 (hereafter "the Act") passed by the Ld. Commissioner of Income Tax (Appeals), Central NER, Guwahati [hereafter "the Ld. CIT(A)"], dated 18.03.2024.

2.1 In this case, the points of contention involve several items of addition/disallowance which have been briefly summarized by the Ld. AR as under:

Group	SL No.	Item of Disallowance	Amount claimed	Amount Disallowed/confirmed	
				By AO	BY CIT(A)
A	1	Repair and Maintenance	2853299	2853299	2853299
	2	Software	327738	327738	327738
	3	Loss on Sale of Fixed Assets	523035	523035	523035
		<b>Sub-Total (A)</b>	<b>3704072</b>	<b>3704072</b>	<b>3704072</b>
B	4	Telephone Expense	333604	50040	33360
	5	Local Conveyance	1714964	257245	171496
	6	Tours and Travels	1555252	233288	155525
	7	Office Expense	438955	65843	43896
	8	Vehicle Running Expense	5761658	864249	576166
		<b>Sub-Total (B)</b>	<b>9804433</b>	<b>1470665</b>	<b>980443</b>
C	9	Late Fee on GST payment	60510	60510	60510
		<b>Sub-Total (C)</b>	<b>60510</b>	<b>60510</b>	<b>60510</b>
		<b>Grands Total</b>	<b>13569015</b>	<b>5235247</b>	<b>4745025</b>

1.3 As has been summarized in the chart provided by the Ld. AR, extracted (supra), the Ld. CIT(A) has given partial relief on some of the items. However, the action of Ld. CIT(A) has resulted in the present appeal with 11 grounds of appeal which are lengthy and argumentative. However, at this stage, it simply needs to be mentioned that the additions sustained by the Ld. CIT(A) have been challenged.

2. Before us, the Ld. AR took us through various portions of the Ld. AO's order and also through various portions of the impugned order. The main thrust of Ld. AR arguments is that the Ld. CIT(A) called for a remand report, which for the sake of reference deserves to be extracted with respect to the relevant portions in full:

*“In the case of the assessee M/s PAWAN COMMUNICATIONS PRIVATE LIMITED, PAN: AAEC9270C, A.Y. 2018-19 assessment proceeding was completed u/s 143(3) read with section 144B of the Income Tax Act, 1961 on 27/09/2021,*

wherein the following addition/disallowance were made with respect to the details furnished in the income tax Return.

Sl No.	Head of Expenses	Amount disallowed
01	Repair and maintenance	28,53,299/-
02	Software development charges	3,27,738/-
03	Loss on sale of fixed assets	5,23,035/-
04	Telephone Expenses	3,33,604/-
05	Local Conveyance	17,14,964/-
06	Tours and Travels	15,55,252/-
07	Vehicle running expense	57,61,658
08	Late fees of GST	60,510/-

During the course of assessment proceeding, the National Faceless Assessment Centre had issued notices u/s 142(1) on various dates requesting the assessee to produce/submit various documents to substantiate the above expenses.

Later on a show cause notice dated 24/09/2021 was also issued to the assessee, requesting to show cause as to why the above mentioned expenses should not be disallowed and added back to the total income. In response to the show cause notice issued, the assessee did not made any compliance and accordingly assessment order was passed disallowing the above mentioned expense and adding it back to the total income of the assessee.

Additional evidences produced before the Ld. CIT(A) (Central) u/s 250(4) of the Income-tax Act, 1961:

The additional evidences/documents as submitted by the assessee before the Ld. CIT(A) (Central) are perused. As per the said additional evidences/documents, it is seen that the assessee had submitted only the only the ledger account details.

In this regard, the assessee vide this office letter no. DIN ITBA/COM/F/17/2023-24/1057769634(1) 07/11/2023 was requested to produce the supporting original bills/vouchers related to the ledgers submitted before the Ld. CIT(A).

In response to the said letter issued, the assessee produced the supporting original bills/vouchers. The same has been verified with the ledgers.

The following are the observation on the said additional evidences/documents:

1. Software development charges amounting to Rs. 3,27,738/-:

The said expense being Capital in nature is eligible for disallowance.

2. Loss on sale of fixed assets amounting to Rs. 5,23,035/-:

Form the ledger copies submitted for the said expenses, it is seen that the assessee had shown 05 nos. of vehicles which were disposed off (being sold off/theft happened/exchanged) during the year. As the vehicles are fixed assets in nature and any addition/deletion made in such head are capital in nature, such loss claimed on disposing off such fixed assets is not revenue in nature and are liable to be disallowed.

3. Late fees of GST amounting to Rs.60,510/-:

*The said expense being penal in nature is liable to be disallowed.*

4. Telephone Expenses amounting to Rs. 3,33,604/-:

*The above expense may be allowed being general in nature and relevant to day to day running of business.*

5. On the issue of expenses claimed under the head "Repair and maintenance" "Local Conveyance", "Tours and Travels" and "Vehicle running expense":

*The ledgers along with the supporting bills/vouchers on the said expenses as submitted by the assessee has been perused. Considering the nature of expenses, the non-incurrence of such expenses cannot be ruled out completely.*

*In view of the above discussions, the remand report in part 'A' and 'B' in the case of the assessee for the A. Y. 2018-19 is hereby submitted as per the following:*

1. Part 'A': Admissibility of the additional evidences:

*In the course of the assessment proceeding vide the show cause notice dated 24/09/2021, the assessee was requested to show cause as to why the above expenses shall not be disallowed and added back to the total income. The assessee was also further requested to submit its reply on the said show cause on or before 25/09/2021. As such, the time limit for submission in the case of the assessee was very limited. Considering, the fact that very limited time (less than a day) was available with the assessee for submission of reply to the show cause issued by the National Faceless Assessment Centre, the additional evidence as submitted before the Ld. CIT(A) may be considered on merits.*

1. Part 'B': Veracity and Merits of the additional evidences/submission:

*The assessee vide this office letter no. DIN ITBA/COM/F/17/2023-24/1057769634(1) dated 07/11/2023 had produced the supporting bills/vouchers related to the ledgers as submitted before the Ld. CIT(A). The same has been verified. On the issue of the veracity and merits of the additional evidences as to whether the said expenses as claimed by the assessee can be allowed/disallowed, the same has already been discussed in the above para(s).*

*In view of the above cited facts of the case, the additional evidences/documents may kindly be considered as per discussion made above."*

The Ld. AR stated that through this remand report, the Ld. AO has virtually accepted the assessee's contention regarding the items in dispute pertaining to revenue versus capital expenses and various sundry disallowances pertaining to the business of the assessee. Regarding the loss of sale of fixed assets, the assessee had shown profit on sale of fixed assets at ₹ 1,91,086/- (page 83 of the paper book) which has not been

disturbed by the Ld. AO but loss on sale of fixed assets has been treated as a capital outgoing and disallowed. The Ld. AR assailed the dual standards applied by the Ld. AO in this regard. Regarding the software upgrade charges, the Ld. AR stated that such expenses were ongoing and routinely done to ensure that the software was up-to-date. Thus, this is also a revenue expense and not capital in nature.

Regarding the late fee under GST, it was averred that the said outgoing was not a penalty but actually it was compensatory in nature. In this regard, the Ld. AR relied on two Hon'ble Supreme Court cases as follows:

- (a) Lachmandas Mathuradas Vs. CIT : 254 ITR 799 (SC)
- (b) Mahalakshmi Sugar Mills Co. Vs. CIT [1980] 123 ITR 429 (SC)

The Ld. AR concluded his arguments by assailing the impugned order by saying that it was neither in conformity with the facts or even the remand report submitted by the Ld. AO.

3. We have carefully considered the submissions of Ld. AR/DR and have also gone through the records before us. A perusal of the remand report [extracted (supra)] clearly reveals that once the facts were before the Ld. AO then he has virtually agreed with the assessee in terms of the factual aspects of the case. In light of the remand report, it is clear that the assessee has been able to establish a case on merit for himself as far as the three items pertaining to revenue versus capital expenditure issue is concerned and the five items under which ad-hoc disallowances made by the Ld. AO have been sustained by the Ld. CIT(A) to a certain extent. Accordingly, there is no hesitation in holding that the additions made under the head repair & maintenance, software development, loss of sale of fixed assets, telephone expenses, local conveyance, tour & travels, office expenses and vehicle running expenses are hereby deleted. Regarding the

addition on account of late fee on GST payment, respectfully following the two Supreme Court cases relied upon by the assessee (supra), we hold that the said outgoing was compensatory in nature and hence could not be disallowed in a manner that has been done by the authorities below.

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

Order pronounced on 06.08.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 06.08.2025  
AK, Sr. PS

*Copy of the order forwarded to:*

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches