

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.482/RPR/2025

निर्धारण वर्ष / Assessment Year : 2016-17

Rajendra Kumar Sapre,
Ward No.7, Shiwa Chowk,
Post-Tifra, Bilaspur (C.G.)
PAN: CQIPS0419R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Birendra Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.08.2025

घोषणा की तारीख / Date of Pronouncement : 26.08.2025

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

This appeal preferred by the assessee emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 17.06.2025 for the assessment year 2016-2017 as per the grounds of appeal on record.

2. In this case, it is noted that the Ld.CIT(Appeals)/NFAC had dismissed the appeal in limine on the ground of delay itself. As per the facts on record, there was delay of 279 days. The assessee had explained before the Ld.CIT(Appeals)/NFAC that he being ignorant of the legal process relating to the Income Tax proceedings, such delay had occasioned and there was no assistant to him who could guide him in such matter. The Ld. CIT(Appeals)/NFAC was of the view that ignorance of law cannot be an excuse to breach the law and finally dismissed the appeal in limine on the ground of delay itself without condoning the same.

3. I am of the considered view that Section 249(3) r.w. provisos of the Income Tax Act, 1961 (for short 'the Act') provides an opportunity to the assessee to bring forth before the Ld. CIT(Appeals)/NFAC reasons for delay for non-compliance of law of limitation and if such sufficient reasons were provided and the Ld. CIT(Appeals)/NFAC was satisfied, then in such circumstances, delay can be condoned by the first appellate authority.

Further, if I read Section 249(3) r.w. provisos a/w. 250(4) & (6) of the Act, it becomes incumbent on the part of the Ld. CIT(Appeals)/NFAC to also make necessary enquiry regarding contentions made by the assessee at least asking questions so to understand whether statement of the assessee is correct or not. Unfortunately, in the present case, the Ld. CIT(Appeals)/NFAC has not done any such exercise, did not make efforts to understand whether the assessee was speaking the truth. Suppose, if the assessee is really ignorant, he is the assessee of the department and when such provisions of Section 249 r.w.s 250 of the Act are there, as a quasi-judicial authority, the Ld. CIT(Appeals)/NFAC should have acted in fair and judicious manner before arriving at a conclusion. That Further, the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)** has clearly laid down following principles of law:

"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.”

4. Considering entire facts of the case, aforesaid judicial pronouncement and analyzing the provisions of the Act, I am of the considered view that the Ld. CIT(Appeals)/NFAC had acted in an arbitrary manner while dismissing the appeal of the assessee. Accordingly, I set aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication while condoning the delay and come up with a speaking order in terms with Section 249(3) r.w. provisos r.w Section 250(4) & (6) of the Act.

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

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

Order pronounced in open court on 26th day of August, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 26th 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