

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.473/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Hem Lal Sahu
Ram Nagar, Gali No.4,
Shitla Para, Raipur (C.G.)-492 001
PAN: EGPPS3559K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 02.09.2025

घोषणा की तारीख / Date of Pronouncement : 02.09.2025

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

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 06.05.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, it is noted that the Ld. CIT(Appeals)/NFAC had dismissed the appeal in limine on the ground of delay of 189 days. The assessee has provided explanation for such condonation which is at Para 2.7 in the order of Ld. CIT(Appeals)/NFAC and the said is extracted as follows:

“2.7 In this case the appellant has given the following reason for delay in filing of the appeal:

“In this case, the assessee filed its ROI for the AY17-18 on 20-11-17 by declaring total income at Rs.1,32,250. Thereafter notice u/s.148 was issued on 26-7-22. Thereafter notice u/s. 142(1) was issued on 26-12-22 & 11-1-23 and SCN was issued on 22-2-23 & 2-3-23. Finally, the assessment u/s.147 rws.144 was completed on 21-3-23 by making addition of Rs.5,00,000 on the count of unexplained unsecured loan u/s.68. The appeal against the order u/s.147 rws.144 dt.21-3-23 should have been filed on or before 20-4-23, however the assessee was not aware of the order passed. The appeal is being filed now only when the present counsel received assessee's credentials. The delay caused was not malafide but the same was bonafide. Therefore, in the light of the above mentioned facts, submitted that the delay is due to the circumstances beyond my control. So, kindly request your Honor to condone the delay and entertain my appeal for adjudication. In convenience caused to your honor is highly regretted”.

However, at Para 2.8, the Ld. CIT(Appeals)/NFAC goes into the aspect of “ignorance of the law as no excuse” which is not the ground for condonation as pleaded by the assessee in the aforesaid para.

3. That as per Section 249(3) r.w. proviso of the Act, sufficient cause needs to be explained by the assessee and the Ld. CIT(Appeals)/NFAC as per Section 250(4) & (6) of the Act should enquire regarding veracity of the submissions made by the assessee. However, this is a case as evident, the Ld. CIT(Appeals)/NFAC goes into some other premises which was not the subject matter of the condonation submitted by the assessee. In such circumstances, in my considered view as per condonation petition placed before the First Appellate Authority since there is no deliberate misconduct on the part of the assessee for causing such delay and neither the revenue had brought out any evidence against the assessee, therefore, the delay of 189 days is condoned keeping in view the following judicial pronouncements 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.**

4. 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 that appellate authority has to consider the merits of the matter and there is no power with the Ld. CIT(Appeals)/NFAC to dismiss the appeal in limine on the ground of delay or for non-prosecution itself. For the sake of clarity, the relevant observation of the Hon'ble High Court is 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.”

5. Respectfully following the aforesaid order, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication while complying with the principles of natural justice. At the same time, it is directed that this being the final opportunity, the assessee shall duly comply with the hearing notices from the Ld.CIT(Appeals)/NFAC. The Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act within three months from receipt of this order.

6. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in open court on 02nd day of September, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 02nd September, 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