IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR
(By Virtual Mode)

BEFORE SH. KUL BHARAT, VICE PRESIDENT
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER

ITA Nos.166, 167 & 168/JAB/2024
A.Ys. 2018-19

Amit Kumar Yadav, Ward No.15, Ghansor, Lakhnadon, Seoni, Madhya Pradesh-480886	vs.	The Income Tax Officer, Ward-Seoni, Madhya Pradesh
PAN:AKDPY5373K		
(Appellant)		(Respondent)

Assessee by:	Sh. G.N. Purohit, Sr. Advocate
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	28.08.2025

O R D E R

PER NIKHIL CHOUDHARY, A.M.

These three appeals have been filed by the assessee, against the various orders of the ld. CIT(A), NFAC under section 250 of the Income Tax Act, 1961 passed separately on 29.08.2024, dismissing the appeals of the assessee against the assessment order passed under section 144 on 27.04.2021, the order under section 272A(1)(d) dated 9.01.2022 and the order under section 271AAC(1) passed on 3.02.2022. As both the penalties emanate from the same assessment order and are its consequences, they are being taken up together with the Assessment for the sake convenience. The grounds of appeal are as under:-

ITA No. 167/JAB/2024

"1. That the learned CIT Appeal has erred in law and on facts of the case in refusing to Condon the delay in filing the appeal. The appellant has explained the delay to be beyond his controlled should be condoned. The appeal should have been admitted for consideration on merits.

2. That the learned CIT (A) has erred in law and on facts of the case in not appreciating the merits of the case before deciding condonation application. The assessee has a very strong case on merits the justice should not be denied to the assessee based on delay as held by Supreme Court in the case of Collector (LA) VS Katiji (1987) SCC 107. The guide line as laid down by the apex court should have been followed. The delay should be condoned and appeal may please be considered on merits.

3. That the learned CIT Appeal as well as Assessing Officer has erred in law and on facts of the case in making / confirming addition of Rs.35109143/- The cash deposited added as income of the assessee does not belongs to him, they are deposits by customers of Central Bank of India whose KISOK is managed by the assessee on commission basis. The addition of Rs.35109143/-as added by AO should be deleted.

4 That The applicant reserves his right to raise additional ground or grounds of appeal those may arise at the time of hearing of this appeal."

ITA No. 166/JAB/2024

"1. That the learned CIT Appeal has erred in law and on facts of the case in refusing to Condone the delay in filing the appeal. The appellant has explained the delay to be beyond his controlled should be condoned. The appeal should have been admitted for consideration on merits.

2. That the learned CIT (A) has erred in law and on facts of the case in not appreciating the merits of the case before deciding condonation application. The assessee has a very strong case on merits the justice should not be denied to the assessee based on delay as held by Supreme Court in the case of Collector (LA) VS Katiji (1987) SCC 107. The guide lines are laid down by the apex court and should have been followed. The delay should be condoned and appeal may please be considered on merits.

3. That the learned CIT Appeal as well as Assessing Officer has erred in law and on facts of the case in making / confirming Penalty of Rs.2712181/-.. The cash deposits sought to be taxed is not income of the assessee. The penalty should be deleted.

4. Without prejudice to the above ground the CIT Appeal as well as assessing officer ought to be verified the service of notice for imposition of penalty in such a circumstance where assessment order was passed ex parte u/s 144 of the income tax act causing initiation of penalty. The penalty of Rs. 2712181/- so imposed may please be quashed.

5. That The applicant reserves his right to raise additional ground or grounds of appeal those may arise at the time of hearing of this appeal."

ITA No. 168/JAB/2024

"1. That 1 That the learned CIT Appeal has erred in law and on facts of the case in refusing to Condone the delay in filing the appeal. The appellant has explained the delay to be beyond his controlled should be condoned. The appeal should have been admitted for consideration on merits.

2. That the learned CIT (A) has erred in law and on facts of the case in not appreciating the merits of the case before deciding condonation application. The assessee has a very strong case on merits the justice should not be denied to the assessee based on delay as held by Supreme Court in the case of Collector (LA) VS Katiji (1987) SCC 107. The guide lines are laid down by the apex court should have been followed. The delay should be condoned and appeal may please be considered on merits.

3. That the learned CIT Appeal as well as Assessing Officer has erred in law and on facts of the case in making / confirming Penalty of Rs.50000/-. The appellant was prevented by reasonable cause in not making compliance of notice u/s 143(2) and u/s 142(1). The penalty of Rs. 50000/- should be quashed in toto.

4. That The applicant reserves his right to raise additional ground or grounds of appeal those may arise at the time of hearing of this appeal."

2. The facts of the case are, that the return of income of the assessee for the assessment year 2018-19 was filed on a total income of Rs.2,28,500/-. Subsequently, the Department received information, that the assessee had deposited a sum of Rs. 3,51,09,143/- in his bank account with the Central Bank of India and the case was selected for scrutiny on account of these high value cash deposited reported in SFT ('business cases'). Accordingly, notices under section 143(2) and 142(1) were issued to the assessee, but the assessee did not submit any reply to these notices. The ld. AO, thereafter, issued a show cause notice dated 24.01.2021, but the assessee did not respond to the same. Therefore, the ld. AO concluded that the assessee had nothing to say in this regard and he added back the amount to the income of the assessee as unexplained cash credit under section 68 of the Income Tax Act and brought the same to the tax, as per the provisions of section 115BBE. He also initiated penalty proceedings under section 271AAC(1) and 272A(1)(d) of the Act. Thereafter, the ld. AO issued penalty notices under section 274 r.w.s 271 AAC(1) asking the assessee why an order imposing a penalty should not be made under the said section in view of the

fact that a sum of Rs.2,71,21,811/- had been determined as the tax under section 115BBE along with surcharge and cess on the same. In the absence of any reply from the assessee, a penalty of Rs.27,12,181/-, being 10% of this amount was levied upon the assessee under section 271 AAC(1).

3. The ld. AO also proceeded with the penalty proceedings under section 272A(1)(d), by issuing a show cause notice to the assessee asking why penalty should not be levied upon him, for failure to make compliance to notices under section 142(1) dated 28.09.2019, 10.12.2019, 3.02.2020, 21.12.2020 and 2.09.2020. The assessee did not make any compliance to the said show cause notice. Therefore, the ld. AO proceeded to levy penalty of Rs. 50,000/- upon the assessee, for non-compliance of these five notices issued under section 142(1) of the Income Tax Act, 1961.

4. Aggrieved with the said assessment and penalty orders, the assessee filed an appeal before the ld. CIT(A), NFAC. The ld. CIT(A), NFAC observed that there was a huge delay in filing of the appeals by the assessee and the appeal against the order under section 144 had been filed after a delay of 670 days. Similarly, he noticed that the appeal against the order under section 272A(1)(d) had been filed after a delay of 780 days and the appeal against the order under section 271AAC(1) had been filed after a delay of 765 days. Therefore, the ld. CIT(A) held that before the appeals could be admitted, it had to first be adjudicated as to whether such delay could be condoned and the assessee had to submit sufficient causes for the delay. With regard to the delay in filing the appeal against the order under section 144, the assessee submitted that the assessee neither had intimation of the notice of hearing, nor of the passing of the *ex parte* order. The email and mobile number entered on the portal was of a third person i.e. the consultant Sh. Irfan Khan S/o Sh. Jameen Khan bearing Aadhar No.455419147034. It was submitted that the consultant whose email and mobile number was entered on the portal, did not inform the assessee regarding the hearing notices or about the passing of the *ex parte* order. Therefore, the assessee was

completely unaware of the notices or of the order as the order had been passed behind the back of the assessee and moreover, the order had been passed during the Covid lockdown period. It was submitted that the consultant informed the assessee only in the month of February, 2023. Furthermore, the said consultant Sh. Irfan Khan had sworn an affidavit to this effect which was attached with the condonation petition. The assessee placed reliance on the judgment of the jurisdictional Madhya Pradesh High Court in the case of CIT, M.P. vs. Khemraj (1978) 114 ITR 75 M.P, the ITAT Amritsar Bench in the case of Bhagwati Colonizer Pvt. Ltd., vs. ITO in ITA No.169/ASR/2015 dated 22.10.2019 and the judgment of the Hon'ble Bombay High Court in the case of Vijay Vishin Meghani vs. DCIT (2017) 398 ITR 250 (Bom). It was submitted that in view of the given facts and circumstances of the case, the delay was worthy of being condoned. The ld. CIT(A) considered the submissions made by the assessee and observed that it was the duty of the assessee to mention his own details on the ITBA. He held that if the assessee chose to mention the details of any other person, any notice or order served on that other person, in the eyes of law, was a notice or order served upon the assessee. The ld. CIT(A) held that ignorance of law for legal procedures cannot be an excuse. He noted that the appeal against the assessment order had been filed by the assessee more than a year after the end of the covid pandemic and the appeal against the penalty orders more than two years after the end of the covid pandemic. The ld. (A) noted that while the appeal against the order under section 144 had been filed by the assessee on 28.03.2023, it was filed against the penalty orders on 29.03.2024 i.e. one year after he became aware of the order under section 144 having being passed in his case because of non-compliance. Therefore, the ld. CIT(A) held that the assessee had been extremely casual in his approach towards income tax proceedings and for this reason no leeway could be extended to the assessee. The ld. CIT(A) also considered the affidavit filed by Sh. Irfan Khan and held that affidavit filed *Suo Moto* was not evidence under the Indian Evidence Act and for this proposition, he placed reliance on the judgments of the Hon'ble Supreme Court in the case of Sudha

Devi vs. M.P. Narayanan (1988) 3 SCC 366 and the judgment of the Hon'ble Madras High Court in the case of Sree Ramavilas Spinning And vs M/S.Virudhunagar Textiles (2011) (1) MWN (Civil) 781. Therefore, the ld. CIT(A) refused to consider the affidavit of Sh. Irfan Khan and condone the delay in the filing of appeals. The ld. CIT(A) also considered various judgments of the Courts on the issue of, 'sufficient cause' and held that the power of condonation of delay had been granted to an appellate authority in order to effect substantial justice, by giving a liberal construction to the expression, 'sufficient cause' in section 5 of the Limitation Act. However, he held that such a liberal construction must fall within the concept of reasonable time and proper conduct of the assessee concerned and should be made keeping in view that section 5 does not bestow unlimited and unbridled discretionary powers and does not cover cases of dilatory tactics, want of bonafide, deliberate inaction or negligence on the part of the assessee. The onus is, therefore, on the assessee who seeks condonation of delay to provide a reasonable explanation for the delay and in the absence of such reasonable cause, the condonation of delay could not be granted to the assessee. Therefore, the ld. CIT(A) dismissed the appeals against the assessment orders and the two penalty orders.

5. The assessee is aggrieved at this summary dismissal of his appeal by the ld. CIT(A). Sh. G.N. Purohit, Senior Advocate (hereinafter referred to as the ld. AR) arguing on behalf of the assessee. submitted that the circumstances behind the delay in the filing of the appeal before the ld. CIT(A) had been duly explained by the assessee before him and the fact that the assessee was not making up a story had been established by the fact that Sh. Irfan Khan had filed an affidavit supporting the version of the assessee. However, the ld. CIT(A) had chosen to disregard the affidavit of Sh. Irfan Khan on the basis of certain court judgments, without bothering to cross examine him to bring his evidence on record. It was further submitted that it had been quite clearly brought out before the ld. CIT(A) that both the assessment order and the penalty orders had been

passed behind the back of the assessee and when the assessee came to know about them, he took measures to file the appeal. Ld. Sr. Counsel also pointed out that much had been made about the fact that there was a delay in the filing of the penalty orders, but pointed out that this was because the assessee was under the impression that the assessment order was the foundation of the matter and once the assessment order was not sustained, the penalty under section 271 AAC(1) would automatically stand vacated and if the explanation for the assessee regarding the delay in filing the appeal was condoned, then the penalty order under section 272A(1)(d) would not remain sustainable. He admitted that the assessee should have simultaneously filed these appeals, but held that in the circumstances, the penalties were not sustainable and therefore, pleaded that the same should have been held in abeyance pending the decision on the assessment order.

6. Arguing on the merits of the case, the ld. AR submitted that the assessee was a banking correspondent running a Customer Service Point of the Central Bank of India and providing banking services through kiosk banking through the account holders of the Central Bank of India. The ld. AO had erred in assuming that the amount appearing as deposited in the bank account of the assessee, was deposited by the assessee and pertained to him. In fact, these amounts belonged to the various account holders of the Central Bank of India, using the services of the bank kiosk of the appellant, which they had affirmed to by placing their thumb impression in the register maintained by him. It was submitted that ld. AO erred in not appreciating the fact that nobody would go to the bank for making small deposits of Rs.50 or Rs.100 or Rs.200 etc., in cash. In fact, these amounts had been transferred online by various small bank account holders of the Central Bank of India through enabled payment system and, in return, they had received cash of a similar account from the assessee's banking kiosk. It was pointed out that the ld. AO had failed to note that the account numbers of the various account holders who had deposited the amount through the kiosk of the assessee, were

appearing in the bank account under consideration as well as in the registers maintained by the assessee. It was submitted that had the assessee been aware of the assessment proceedings, then all these things could have been brought to the knowledge of the ld. AO, but due to the negligence of the then counsel, the assessee was unable to place these things before the ld. AO and this had resulted in the creation of a totally unwarranted demand and related penalties upon the assessee. It was, therefore, prayed that the assessee may kindly be given another opportunity to demonstrate that the amount was not taxable in his hands.

7. On the other hand, Sh. Shrawan Kumar Meena, CIT DR (hereinafter referred to as the ld. CIT DR) pointed out that this was not a case of a minor delay but the delay stretching for more than a year or even two years after the end of the covid period and in the case of the penalties, the assessee could not even claim that he was unaware about the same. Therefore, the negligence was writ apparent on the face of it and the appeals of the assessee were therefore, justifiably rejected by the ld. CIT(A), as the assessee could not show sufficient cause for the said delay. The ld. CIT DR therefore, prayed that the orders of the ld. CIT (A) may be sustained and the appeals of the assessee against the same, be dismissed.

8. We have duly considered the facts and circumstances of the case. It appears from the submissions made by the assessee which are supported by an affidavit of his then counsel, that the assessee was unaware about the assessment and penalty proceedings at the time that they were unfolding, on account of the fact that the said counsel, whose email address and telephone number were entered in the records, omitted to take note of the various notices and inform the assessee with regard to the same. Thus, the assessee did not have occasion to either represent his case before the ld. AO or even file the appeal on time before the ld. CIT(A). The ld. CIT(A) has dismissed the affidavit filed by the counsel holding that it does not constitute evidence in itself, but has failed to consider that it was a statement under oath of the counsel given

voluntarily, which could be brought on record by the ld. CIT(A) by an examination of the counsel either by himself or by the ld. AO, to determine the truth of his statements. The ld. CIT(A) ought to have considered that while the assessee could have seen some advantage in not appearing before the ld. AO, he could derive no advantage by purposely delaying his appeal, had he been aware of the facts of the assessment. Therefore, the very fact that the appeal was delayed, would indicate that the assessee was not untruthful when he submitted, that he was unaware of the said proceedings on account of the fact of notices and orders being sent to a different email ID and since the statement of the assessee was supported by the affidavit of the erstwhile counsel, the said should not have been discarded outright. We note that the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. MST. Katiji (1987) 167 ITR 471 (SC) has held that an assessee does not ordinarily stand to benefit from delay. In fact, he runs a very serious risk of the appeals being dismissed on this account and therefore, there is no reason to presume that any delay was occasioned by negligence or malafide in the normal course. Furthermore, the Hon'ble Supreme Court has held in the said case, that a liberal view should be taken while considering applications of condonation of delay, because the worst that can happen is that an issue would be considered on its merits rather than being dismissed on account of technical consideration. Considering the aforesaid judgment of the Hon'ble Supreme Court and after taking into account the circumstances, as described by the assessee in his petition, which is duly supported by an affidavit of the erstwhile counsel, we hold that there were sufficient reasons to explain the delay in the filing of the appeal against the order under section 144. Furthermore, considering the facts of the case as brought out by the ld. AR in the course of his arguments, it is fairly apparent that if such arguments are true and can be established during the course of proceedings, the amount that has been added back in the hands of the assessee cannot be the income of the assessee as the deposits would represent the money of the various depositors, who were availing the benefits of the banking kiosk facility, provided by the assessee for the Central Bank

of India. As per Article 265 of the Constitution, no tax can be levied against a person except by authority of law. Considering the possibility that the amount assessed in the hands of the assessee, may not represent his income, we deem it fit in the interest of justice to restore the matter back to the file of the ld. AO, so that the assessee may present the necessary documents and evidences before the ld. AO to demonstrate that he was a banking correspondent and that the amounts deposited into the said bank account under question, did not represent his income but the money of the customers of the banking service kiosk that he was running for Central Bank of India. Accordingly, the assessee's appeal in ITA No. 167/JAB/2024 is held to be allowed for statistical purposes.

9. Coming to the assessee's appeals against the penalty under section 271 AAC(1) and the penalty under section 272A (1)(d), we observe that the assessee ought to have filed appeals against the same along with his appeal, in respect of the aforesaid assessment order and his failure to do so, can only be ascribed to his inability to appreciate the necessity for filing the same simultaneously for whatever reasons ,rather than any negligence on his part. Be that as it may, we cannot fail to consider the fact that since the levy of penalty under section 271 AAC (1) is contingent upon the making of an addition that is chargeable according to the provisions of section 115BBE, our decision to restore the said matter to the file of the ld. AO for fresh examination in the light of the information brought on record by the ld. AR, would render this penalty as premature. We, therefore, delete the penalty with the liberty to the Department to initiate it afresh, if the results of the assessment done by the ld. AO pursuant to restoration of the case to his file, makes it necessary. Accordingly, appeal in ITA No.166/JAB/2024 is held to be allowed. Similarly with regard to the penalty under section 272A(1)(d), in view of the fact that we have held that there were sufficient reasons to justify the non-compliance to the notices under section 142(1) while restoring the assessment back to the file of the ld. AO, the levy of penalty for non-

compliance to the five notices under section 142(1) cannot be sustained in the light of our findings. Accordingly, the same is deleted and appeal in ITA No. 168/JAB/2024 is held to be allowed.

10. In the result, the assessee's appeal in ITA No.167/JAB/2024 is allowed for statistical purposes while the assessee's appeals in ITA Nos.166 & 168/JAB/2024 in respect of the two penalties are held to be allowed.

Order pronounced on 28.08.2025 in the open Court.

Sd/-	***Sd/-***
[KUL BHARAT]	**[NIKHIL CHOUDHARY]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

DATED: 28/08/2025
Sh
Copy forwarded to:

1. Appellant –
2. Respondent –
3. CITDR , ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.