

**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 No.204/JAB/2025  
A.Y. 2017-18

Krishna Construction Company, 25/356, Saman Road, Opp. Bansagar Gate, Huzur, Rewa, Madhya Pradesh	vs.	Dy. Commissioner of Income Tax, Circle, Katni
<b>PAN:AAIFK0459R</b>		
(Appellant)		(Respondent)

Assessee by:	Sh. Sapan Usrethe, Advocate
Revenue by:	Sh. Alok Bhura, Sr. DR
Date of hearing:	19.08.2025
Date of pronouncement:	29.08.2025

**ORDER**

**PER NIKHIL CHOUDHARY, A.M.**

This is an appeal filed by the assessee against the order of the Id. CIT(A) under section 250 of the Income Tax Act, passed on 26.07.2024, rejecting the appeal of the assessee against the orders of the Id. AO passed under section 144 of the Income Tax Act, 1961 on 19.12.2019. The grounds of appeal are as under:-

*"1. On the facts and in the circumstances of the case, the Id. CIT(A)(NFAC) erred on facts and in law in confirming the assessment made under sec. 144 of the IT Act, 1961 made for A.Y. 2017-18 refusing to condone delay in filing of appeal of only one day and without issuing any notice of hearing under sec. 250 of the Income-tax Act, 1961.*

*2. On the facts and in the circumstances of the case, the order passed by the Id. CIT(A) (NFAC) under sec. 250 of the IT Act, 1961 dated 26/07/2024 is contrary to law and on facts and against the principles of natural justice.*

*3. On the facts and in the circumstances of the case, the whole assessee made under sec. 144/143(3) of the IT Act, 1961 is illegal and bad in law and against the principles of natural justice.*

*4. On the facts and in the circumstances of the case, the lump sum disallowance of Rs. 25,00,000/- out of expenditure incurred on purchase of materials, labour payments, labour welfare expenses and repairs and maintenance aggregating to Rs. 8,24,76,588/ without pointing out any specific item of unverifiable or*

*disallowable in nature is unjustified, unwarranted, arbitrary and excessive. The disallowance deserves to be deleted in toto.*

*5. On the facts and in the circumstances of the case, the disallowance of Rs. 48,13,449/ out of sub-let wages of Rs. 1,60,44,830/- under sec. 40(a)(ia) of the Act for non-deduction of tax at source under sec. 194C of the Act without any opportunity to the appellant is unjustified, unwarranted and arbitrary. The same deserves to be deleted in toto.*

*6. On the facts and in the circumstances of the case, the addition of Rs. 41,76,872/- on account of under reported receipts treating the entire receipts as business income without affording adequate opportunity to the appellant to reconcile, is unjustified and unwarranted. The addition deserves to be deleted in toto.*

*7. On the facts and in the circumstances of the case, and without prejudice to ground No.4, in any case, only the net profit on the under-reported receipts as per Form 26AS should only have been added in the hands of the appellant.*

*8. On the facts and in the circumstances of the case, the initiation of penalty proceedings under sec. 270A, 271A and 272A(1)(d) of the IT Act, 1961 is unjustified, unwarranted and against the principles of natural justice.*

*9. On the facts and in the circumstances of the case, charging of interest under sec. 234B at Rs. 9,13,110/- and Rs. 1,16,883/- under sec. 234D of the I.T. Act, 1961 is unjustified, unwarranted and excessive. The same deserves to be modified according to law.*

*10. The appellant craves leave to add, alter or modify any grounds of appeal at the time of hearing."*

2. It is seen that the appeal is delayed by about nine months. It has been submitted that the Id. CIT(A) passed the appellate order on 26.07.2024. However, the appellant came to know about the same in the last week of May, 2025. The requisite appeal fee was deposited on 3.06.2025 and the appeal was filed thereafter. It was submitted that the Id. CIT(A) had dismissed the appeal of the appellant rejecting the delay in filing of the appeal by one day without even issue of a single notice of hearing. The assessee only came to know of the appeal order dated 26.07.2024, when the penalty notice under section 271A of the Act was issued to it vide DIN and Letter No. ITBA/PNL/F/17/2025-26 1076484849(1) dated 27.05.2025. It was for this reason that the appeal of the assessee was delayed and it was prayed that the delay may kindly be condoned. In his petition, the assessee cited several decisions of the Hon'ble Supreme Court to the effect that sufficient cause was to receive a liberal construction so as to advance substantial justice and that unless the mala fides were writ large on the conduct of the party, generally as

a normal rule, delay should be condoned. Finally, it was prayed that the appeal should be admitted because the assessee did not benefit from filing the appeal belatedly. We have duly considered the aforesaid matter, it appears that the decision of the Id. CIT(A) to dispose the appeal without giving any notice to the assessee caught the assessee unawares and therefore, the delay was occasioned by that. As this, in our opinion, constitutes sufficient cause, the delay in filing the appeal is condoned keeping in mind the decision of the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs. MST. Katiji (1987) 167 ITR 471 (SC) wherein the Hon'ble Court has held that effort should be made to hear a case on merits rather than to dismiss it on technical grounds because there is no reason to assume that the delay in filing the appeal is intentional and the appellant runs a serious risk by delaying the appeal. Hence, as the appeal appears to be delayed on account of the fact that the assessee was unaware of the order of the Id. CIT(A), the delay in filing the same is condoned.

3. The facts of the case are that the assessee is a firm of Civil Contractors. A return declaring total income of Rs.28,99,430/- was filed on 31.10.2017. On gross contract receipts of Rs.12,16,02,736/-, the assessee firm declared net profit before interest and salary to partners at Rs.89,45,851.61/- i.e. @ 7.36%. The case was selected for complete scrutiny through CASS. On perusal of the profit & loss account, the Id. AO observed that the assessee had debited Rs.4,50,47,450/- under the head, 'material expenses', Rs.3,30,45,840/- under the head, 'labour payment', Rs.3,30,458/- under the head, 'labour welfare expenses' and Rs.40,52,840/- under the head, 'repair and maintenance'. He asked the assessee to substantiate these payments, but in the absence of response, he held that the same were unverifiable. Accordingly, he made a disallowance of Rs.25,00,000/- on this account and initiated penalty proceedings under section 270A. Furthermore, the Id. AO also observed that the assessee had debited sub let for wages of Rs.1,60,44,830/- but not deducted tax on the sub let for wages, which violated the TDS provisions under section 194C. Therefore, he made 30% amounting to Rs. 48,13,449/- disallowance of the said

expenses under section 40a(ia) of the Income Tax Act and initiated penalty proceedings under section 270A. The ld. AO also noted that the assessee had shown receipt of Rs.20,38,532/- from Executive Engineer, Bansagar, Keoti Canal Division, Rewa, but as per 26AS, the assessee was seen to have received Rs.62,15,404/- from the said person. Since the assessee had not shown the total amount of payments, therefore, total difference of Rs.41,76,872/- was added back. The assessment was completed at a total assessed income of Rs.1,43,36,708/-. In the body of the order, it is written that the assessment was done under section 143(3) of the Act. However, on the first page of the order, the section and sub section under which the assessment is made was entered as, '144'. The assessment order does not make any reference to any notice issued or lack of compliance by the assessee to such notices.

4. Aggrieved with the said assessment order, the assessee carried the matter to the ld. CIT(A). The ld. CIT(A), NFAC refused to condone the delay in filing of the appeal holding that the reasons for condoning the delay were not satisfactory. No other reasons were cited. He also confirmed all the allowances made by the ld. AO in a one-page order which is seen to have been passed on 26.07.2024 on the strength of a notice issued on 7.02.2020. It does not appear from the order of the ld. CIT(A) that any further notices were issued to the assessee in the intervening period.

5. Aggrieved by the said dismissal of its appeal, the assessee is before us. Sh. Sapan Usrethe, Advocate (hereinafter referred to as the assessee) representing the assessee drew reference to these various contradictions outlined above and pointed out that the ld. CIT(A) was completely unjustified both in rejecting the application for condonation of delay filed by the assessee, whereto the delay was only of one day and furthermore, he argued that the ld. CIT(A) was totally unjustified in passing the appeal order in the year 2024 on the strength of a notice issued on 7.02.2020, without giving the assessee any opportunity to make compliance, before he decided to issue the order. The ld. AR also drew our attention to the assessment order to point out, that the assessment order did not even discuss

the fact of issue of any notice or non-compliance thereof. Furthermore, the additions were made in a completely adhoc manner and penalty had even been initiated under section 271A, for failure to maintain books of accounts, when the fact was that the assessee not only maintained the books, but the same were audited. It was, therefore, prayed that since the denial of natural justice was writ on the face of the orders that were passed, the matter may kindly be reverted back to the file of the ld. AO, so that the assessee could make its case and show how the conclusions drawn were incorrect.

6. Sh. Alok Bhura, Sr. DR (hereinafter referred to as the Sr. DR) requested that the Tribunal may kindly issue directions to the assessee to make due compliance before the ld. AO in any restored proceedings, as the additions had only been made due to non-compliance of the assessee during the assessment proceedings, which had been admitted by the assessee in the condonation of delay petition that had been filed.

7. We have duly considered the facts and circumstances of the case. While the order of the ld. AO is extremely cryptic, perusal of the condonation petition filed by the assessee shows that the assessee did not comply with the notices issued under section 143(2) and 142(1) of the Act. In the circumstances, the order was passed *ex parte*. However, we note that the ld. CIT(A) has neither spelt out the reasons for the rejection of the condonation petition, nor given any reasons for holding that the additions were fit to be confirmed, other than to say that the assessee had not furnished any information in this regard. We cannot fail to note that the ld. CIT(A) did not give the assessee any opportunity to make any submissions before passing the appeal orders and simply used the pretext of a notice issued more than four years ago, to state that compliance had not been made. Thus, it is quite clear that the orders against the assessee have been passed without hearing the assessee and this constitutes a violation of the principles of natural justice. Considering the overall facts of the case, we deem it appropriate in the interest of justice to both parties, that the matter should be restored to the file of the ld. AO for a *de novo*

assessment. We hereby direct the assessee to make full compliance before the ld. AO so as to enable the ld. AO to appreciate the correct facts of the case while making the assessment. As the appeal has been restored to the file of the ld. AO, it is held to be allowed for statistical purposes.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 29.08.2025 in the open Court.

***Sd/-***

**[KUL BHARAT]  
VICE PRESIDENT**

**DATED:29/08/2025**

<sup>Sh</sup>

Copy forwarded to:

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

***Sd/-***

**[NIKHIL CHOUDHARY]  
ACCOUNTANT MEMBER**

By order  
Sr. P.S.