

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH ('SMC'): DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.103/DDN/2025
(ASSESSMENT YEAR 2013-14)

ITA No.104/DDN/2025
(ASSESSMENT YEAR 2015-16)

Abhishek Agarwal, Near Town Area Office, Doiwala, Distt Dehradun, Uttarakhand-248140. PAN-ALZPA7733L	Vs.	Income Tax Officer, Ward-1(1)(1), Dehradun.
(Appellant)		(Respondent)

Assessee by	Shri Rajiv Sahni, CA
Department by	Shri A.S. Rana, Sr. DR
Date of Hearing	08/09/2025
Date of Pronouncement	12/09/2025

ORDER

PER MANISH AGARWAL, AM:

Both the appeals are filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ('the Ld. CIT(A)' for short) both dated 26.06.2024 for Assessment Years 2013-14 and 2015-16.

2. From the perusal of the records, it is found that the present appeal is delayed by 309 days. Assessee has filed an application for condonation of delay supported by duly sworn in affidavit. The contents of the affidavit are reproduced as under:

"I, Abhishek Agarwal son of Late Shri Tara Chand Agarwal resident of Near Town Area Office, Doiwala, Distt. Dehradun-248149(hereinafter referred to as the Deponent") do solemnly affirm and state on path as under:-

1. That I am assessed to Income Tax vide PAN ALZPA7733L and am conversant with the all the facts stated hereunder.

2. That an Appeal Order was passed by the NFAC on 26.6.2024 dismissing my Appeal and upholding the Assessment Order passed by Assessing Officer.
3. That I did not receive the Appeal Order on my registered email ID " abhishekagg28@gmail.com" but it was sent to another email ID.
4. That I received a telephonic call from the Inspector of JAO on 26.4.2025 asking me to deposit the demand of tax in view of the dismissal of the Appeal by the NFAC.
5. That I visited the CA appointed for the purpose and he on viewing my account on the Income Tax Portal informed me that the Appeal Order was passed on 26.6.2024.
6. That there is no other recourse except for filing of this Appeal for remedial action.
7. That there is an inordinate delay of approx 255 days in filing the Appeal.
8. That the Appellant does not stand to benefit by lodging the Appeal late, rather runs a serious risk of the case being decided against him even though he has strong merits in the case.
9. That the merits in the case stand to be defeated if the condonation is not granted for delay in filing the Appeal.
10. That substantial justice gets dwarfed by the technical consideration if the delay in filing of the Appeal is not condoned.
11. That the delayed filing of the Appeal was not deliberate, or on account of culpable negligence or on account of mala fide intention.
12. That justice can be done only if the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities.
13. That your Honours are respected not on account of your powers to legalise injustice on technical grounds but on expectation of your capabilities to remove injustice.
14. That the Appellant's application for condonation of delay in filing the Appeal is supported by the observations of the Hon'ble Supreme Court in the case of of Rafiq v. Munshilal (1981) 2SCC 788 and N.Balakrishnan v M. Krishnamurthy (1998) 7 SCC 123.
15. That the Hon'ble Supreme Court in the case of Mool Chandra vs Union of India and Another 2024 SCC Online SC 1878 decided on 5.8.2024 held as to what constitutes a "sufficient cause" by relying on the decision of Bombay High Court in the case of N.L.Abhyankar vs Union of India (1995) 1 Mah LJ 503 to grant condonation for a delay of 425 days. The operative part of the observations of the Hon'ble Bombay High Court are the real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by the reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

16. That the delay in filling the Appeal before the Hon'ble ITAT is not attributable to any laxity shown by me, rather due to non-communication of the Appeal Order on the designated email ID mentioned in Form 35.

17. That the delay in filing of the appeal is purely due to non-communication of the Appeal Order on the designated email ID mentioned in Form 35

18. That I had no intention to jeopardize the interest of the revenue by delaying the filing of the Appeal.

19. That in case, the condonation of delay in filing of this Appeal is not granted, I shall be rendered grave injustice, without the merits of the case being heard.

20. That the delay in filing the Appeal before your Honours is due to non communication of the Appeal Order on the designated email ID mentioned in Form 35, and it falls within the ambit of "sufficient cause" under Section 253(5) of the Income Tax Act, 1961."

3. After considering the facts and the prayer of the assessee, we find that there was bonafide and sufficient reason regarding delay in filing the appeal. Under these circumstance and by respectfully following the judgement of hon'ble supreme court relied upon by the assessee, the delay is condoned and appeal of assessee is admitted for adjudication.

4. Heard both the parties and perused the material available on records.

5. The assessee has challenged the orders of the Ld. CIT(A) wherein the Ld. CIT(A) has confirmed the orders of the AO for the reason that on five occasions both the appeals were listed for hearing, however, the assessee failed to make any compliance. Now before us, the Ld. AR of the assessee submits that due to the fact that notices for hearing were sent on the mail id other than the mail id provided in Form 35, compliance could not be made before the Ld. CIT(A). Further no compliance was made before the AO as the assessee was not aware of e-proceedings and the reassessment order was also passed *ex-parte*. He thus requested that the matter be sent back to the file of the AO where the assessee will make necessary compliance and will file all the requisite details.

6. On the other hand, the Ld. Sr. DR has objected to the request of the assessee.

7. Heard both the parties. From the perusal of the appellate order, it is seen that Ld. CIT(A) has provided several opportunities to the assessee however, the assessee failed to respond, thus the ld. CIT(A) was compelled to confirm the additions made by the AO. It is true that assessee has not filed any submission before the CIT(A) in support of the grounds of appeal taken but that for that reason assessee should not be deprived off the substantive justice. Further from the perusal of the assessment order, it is seen that no compliance was made before the AO also. In view of these facts and circumstances of the case and in the interest of justice, we set aside both the orders of lower authorities and restore back both cases to the file of AO to pass the reassessment orders *denovo* fresh after providing the opportunity of hearing to the assessee. The assessee is also directed to participate before the AO in the proceedings and file all the necessary evidences in support of the claim with regard to the source of cash deposit into bank. With these directions, all the grounds of appeal of the assessee in both the appeals are partly allowed for statistical purposes.

8. In the result, both the appeals filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 12.09.2025.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 12.09.2025

PK/Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT DEHRADUN