

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH AT KOLKATA**

**[Virtual Court]**

**Before**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 171/PAT/2025  
Assessment Year: 2018-19**

Rajesh Kumar <b>(Appellant)</b>	Vs.	ITO, Ward-3(2), Gaya <b>(Respondent)</b>
<b>PAN: BIQPK5133D</b>		

**Appearances:**

**Assessee represented by** : Rakesh Kumar, Adv.

**Department represented by** : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 21-July-2025

Date of pronouncing the order : 18-September-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 29.11.2024, which has been passed against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 13.03.2023.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 69 days. An application seeking condonation of delay has been filed by the assessee stating as under:

*"I had received information from the present counsel on 17th March, 2025 that the said appeal has been dismissed by the CIT (A)NFAC Delhi way back*



on 29/11/2024. On further advice, he made me aware of my vested right of appeal against the said order before the Income Tax Appellate Tribunal, Patna Bench, Patna and according to him, the appeal is to be filed within 60 days of communication of order to the assessee. He further pointed out that this order was uploaded on the e-portal under the tab "For your information" way back on 29/11/2024 and hence, the appeal could be treated as belated from the date of order and its uploading on e-portal.

Sir, I have entrusted my counsel Mr. Rakesh Kumar and this order of CIT(A) NFAC Delhi has come to my knowledge only on 17th March, 2025 through my counsel and hence, the present appeal may not be treated as a belated appeal as the same is being filed much before expiry of limitation of 60 days.

However, should for any reason, if this appeal is treated as a belated appeal by counting the limitation from the date and uploading of the order on the e-portal, I earnestly pray that the delay in filing of the appeal may kindly be condoned as I am prevented by sufficient and reasonable cause from not filing the appeal within the timeline from the date of order and/or its uploading of order on the e-portal.

As per the advice of my counsel, I am filing the appeal along with condonation petition and affidavit of myself enumerating therein the circumstances in which the order of CIT (A)NFAC Delhi came to his knowledge and thereafter, in my knowledge.”

1.2. Before us, the Ld. AR stated that in Form No. 36 there is wrong mention of delay which is only of 69 days. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the Ld. CIT(A)NFAC Delhi has erred in sustaining the order of the A.O. and thereby affirmed the order made by the A.O. amounting to Rs. 14,20,370/-.

2. For that the Ld. CIT(A) NFAC Delhi has erred in passing the impugned ex-party order without giving proper and adequate opportunity to the appellant and thus has violated the principles of equity and natural justice.



3. For that the Ld. CIT(A) NFAC Delhi has erred in violating the principles of natural justice by disposing of the appeal without personal hearing.

4. For that the Ld. CIT(A) NFAC Delhi has erred in upholding addition of Rs. 1,12,30,000/- as per provision U/s 69A of the I. T. Act, 1961 and interest received of Rs. 24,518/- which is wrong, illegal and unjustified on the facts and circumstances of the appellants case.

5. For that the Ld. CIT(A) NFAC Delhi has erred and not adjudicating the imposition of penalty u/s 271F amounting to Rs.10,000/- is wrong, illegal and unjustified on the fact and in the circumstances of the appellants.

6. For that the Ld. CIT(A) NFAC Delhi has erred sustaining of invoking section 115BBE in respect of taxed of Rs.1,86,61,540/- is wrong, illegal and unjustified on the fact and in the circumstances of the appellants.

7. For that the Ld. CIT (A) NFAC has erred in affirming charging of interest u/s 234A and 234B amounting to Rs.47,71,305/- and Rs.52,05,060/- respectively.

8. For that the appellant may not be treated as assessee in default in respect of the disputed demand including interest amounting to Rs.1,86,61,540/-.

9. For that the appellant reserves its right to furnish detailed written submission along with evidences and documents on or before the date of hearing.

10. For that the appellant may be given opportunity of personal hearing physically or virtually as the law permits at the time of hearing of the appeal.

11. For that the whole order is bad in fact and law of the case and is fit to be modified/annulled.

12. For that the other grounds, if any, shall be urged at the time of hearing of appeal.”

3. Brief facts of the case as culled out from the statement of facts filed along with Form No. 36 are as under:

“That the reason of reopened for scrutiny has cash deposit in his bank account That the evident from the assessment order that there was no return filed by the appellant and h case deposited amount of Rs.1,12,30000/- during the Financial year 2017-18 relevant to Assessment Year 2018-19 Thereafter proceedings u/s 147 has been initiated after approval of competent authorities and issued notice u/s 148 dated 29.03.2022. In response to notice u/s 148 of the LT. Act, 1961 appellant has not filed any reply. During the assessment proceedings issued notices for compliance. But



*no compliance made by the appellant due to unavoidable circumstances. That the A.O has passed assessment order U/s 144 and added Rs.1,12,54,518/- as per provision u/s 69A of the I.T. Act, 1961 and assessed taxed U/s 115 BBE of the Act at the rate of 60 percent.”*

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued notices for hearing after condoning the delay but since the assessee did not respond, he inferred that the assessee is not aggrieved with the assessment order and is not interested in prosecuting the same and the additions/disallowances as per the grounds of appeal were confirmed and the appeal was dismissed. It is mentioned in the Statement of Facts as under:

*“The appellant came to know about the assessment order u/s 147 r.w.s. 144 read with section 144B dated 13/03/2023 recently when a notice dated 20/08/2023 show cause for Non-compliance against notice received issued by National Faceless Assessment Centre, Delhi was served through Speed Post and accordingly this appeal is filed with a condonation petition.*

*Being aggrieved the appellant has filed appeal before the CIT (A), Patna on 30.08.2023. That the defect notice issued for condonation of delay has not enclosed. That the appellant has filed a reply in response the above notice which is already mentioned in CIT (A) order. Thereafter two notices issued for hearing on 22.10.2024, and 14.11.2024 for compliance on 06.11.2024 and 19.11.2024 respectively. That the adjournment petition filed by the appellant on 06.11.2024. After that the appellant has engaged Tax Consultant stationed at Patna for pursuing the appeal and pursuant to notices of hearing he has ignore/Missed out due to pre-occupation/by mistake, and thereafter, nothing was compliance on e-portal of CIT(A) NFAC Delhi. However, no compliance has been made in response of the above notices. Hence, the ex-party order has been passed by the CIT (A) NFAC Delhi on 29.11.2024.*

*The appellant is filing this appeal along with condonation petition and affidavit with a prayer to condone the delay and hears the appeal on merits.”*

5. Rival contentions were heard and the record and the submissions made have been examined. Both before the Ld. AO as well as before the



Ld. CIT(A), the assessee could not be represented properly and the Ld. AR requested that the matter may be remanded to the Ld. Assessing Officer. When enquired as to why the response could not be made before the Ld. CIT(A), it was stated that no action was pending on the portal and the assessee could not respond before the Ld. AO as the proper communication was not received. It was only when the show cause notice for non-compliance to the notice issued by the NFAC was received and which was received through speed post that the assessee was aware about the assessment order made u/s 147 r.w.s. 144 r.w.s. 144B of the Act.

6. The Ld. DR though relied upon the order of the Ld. CIT(A), had no serious objection for remanding the matter back to the Ld. AO.

7. We have considered the submissions made. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. We note that section 250(6) casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. The provisions of section 250(6) are reproduced as under:

*“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

8. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. The Ld. CIT(A) upheld the view of the AO and has not passed a reasoned order for arriving at the decision, as is required u/s 250(6) of



the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot dispose assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

*7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.*

9. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** after discussing the provisions of sections 250(1) and 251(1) that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*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 Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 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. Section 251(1)(a) and (b) 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-section (2) of Section 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 Section 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 with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer 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 Section 251(1)(a) and (b) and Explanation to Section 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.*

10. Since there was no proper compliance before both the Ld. AO as well as the Ld. CIT(A), in the interest of justice and fair play it was considered that the request of the assessee to set aside the case before the Ld. AO may be allowed so that a proper opportunity of being heard may be provided. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the order of the Ld. AO and remit the matter back to the Ld. AO for making the reassessment de novo. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.



11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced in the open Court on 18<sup>th</sup> September, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 18.09.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Rajesh Kumar, Vill- Chaudharain Chak, Mastthu, PS- Belhi, Patna, Bihar, 803213.**
2. **ITO, Ward-3(2), Bihar.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata