

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.394/RPR/2025
निर्धारण वर्ष / Assessment Year : 2018-19

Das Processors
44, Vardhman Nagar, Jain School Road,
Rajnandgaon (C.G.)-491 441
PAN: AAIFD6768Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.09.2025

घोषणा की तारीख / Date of Pronouncement : 18.09.2025

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

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 23.12.2024 for the assessment year 2018-19 as per the grounds of appeal on record.

2. At the time of hearing none appeared for the assessee. The matter is heard after recording the submissions of the Ld. Sr. DR and on careful perusal of the material available on record.

3. At the very outset, it is noted that the appeal is time barred by 109 days. Elaborating the reasons leading to the said delay, the assessee has filed condonation petition a/w. affidavit dated 16.06.2025. It was submitted by the assessee that in Form 35, there is specific column on the personal information mentioning "whether notices /communication may be sent on email?" and the assessee has given reply as "No" which means there is an option given to the assessee for receiving of the notice/communication through email or not. In this case, the order of the Ld. CIT(Appeals)/NFAC was sent by the department through registered email id but since the assessee has opted as "No", therefore, there was no checking of such mail and therefore consequent non receipt of the said order resulting in the delay.

4. The Ld. Sr. DR in this regard submitted that the department is in the process of amending this provision in Form 35.

5. Considering the aforesaid facts on the ground of limitation, we are of the considered view that such delay has been caused due to technical issue arising from Form 35 itself and it cannot be attributed for any deliberate or malafide conduct on the part of the assessee since there was no receipt of the order of the Ld. CIT(Appeals)/NFAC by the assessee physically while the assessee has already opted as "No" as observed herein before and for that reason, the said delay has occurred. In so far the delay is concerned, it would be relevant to point out that the Hon'ble Supreme Court in the case of **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025**, had observed that a justice oriented and liberal approach ought to be adopted while considering the aspect of condoning the delay involved in filing of the appeal. Also, the **Hon'ble High Court of Chhattisgarh** in the case of **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025**, after relying on the judgment of the Hon'ble Supreme Court in the case of Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur (supra) had held that a justice

oriented and liberal approach be adopted while considering the application filed by the assessee for condonation of delay.

6. That in the recent judgment of the **Hon'ble Supreme Court** in the case of **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025**, the Hon'ble Apex Court while interpreting Section 5 of the Limitation Act, 1963 regarding the condonation of delay in respect of case of land acquisition has observed and held on the aspect of delay that although the delay cannot be condoned without sufficient cause, the merits of the case could not be discarded solely on the ground of delay. A liberal approach, therefore, should be taken in condoning the delay when limitation ground undermines the merits of the case and obstructs the substantial justice. In other words, the objective of the court should be to deliver substantial justice coupled with liberal and judicious approach while deciding the issue of limitation and whenever it is found that the case has merits which needs to be addressed substantially, in such case, the delay should be condoned. Accordingly, the said delay of 109 days involved in the present appeal is condoned.

7. At the very outset it is noted that as evident from Para 4 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the

assessee. For the sake of clarity, the Para 4 of the Ld.CIT(Appeals)/NFAC's order is culled out as follows:

“4. During the appellate proceedings, several notices u/s. 250 were issued giving opportunities of being heard to the appellant, which were duly delivered upon the appellant through registered email. No response is received till date.”

8. The Ld. Sr. DR has fairly conceded that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee.

9. We have carefully considered the contents in the documents/material available on record. As per the aforesaid examination of the entire spectrum of the matter in the interest of natural justice, we deem it fit and proper to provide one final opportunity to the assessee to represent its case on merits before the Ld. CIT(Appeals)/NFAC.

10. On a perusal of the order of the Ld.CIT(Appeals)/NFAC, it is observed that the Ld.CIT(Appeals)/NFAC dismissed the appeal of the assessee in limine for non-compliance without dealing with the merits of the case. In our considered view, once an appeal is preferred before the CIT(Appeals)/NFAC, it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the “Explanation” to Sec.251(2)

of the Act reveals that the CIT(Appeals)/NFAC remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals)/NFAC is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed 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 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.”

11. Respectfully following the aforesaid order, we 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.

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

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

Order pronounced in the open court on 18th day of September, 2025.

Sd/-
G. D. PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 18th 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, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.