

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.516, 517 & 518/RPR/2025

निर्धारण वर्ष / Assessment Year : 2014-15

Shri Manish Kumar Jain
C/o. Maa Padmavati Rice Industries,
Ramadhin Marg, Rajnandgaon-491 441
PAN: ADNPN1476F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Rajnandgaon (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. R. Rao, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 22.09.2025

घोषणा की तारीख / Date of Pronouncement : 22.09.2025

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

The captioned appeals preferred by the assessee emanates from the respective orders of the Ld.CIT(Appeals)/NFAC, Delhi dated 29.05.2025 and 21.06.2025 for the assessment year 2014-15 as per the grounds of appeal on record.

2. At the very outset, it is noted that the captioned appeals are time barred by 29 days, respectively which are condoned by the Bench vide order sheet entry dated 15.09.2025 observing as follows:

“At the very outset, the Ld. Counsel for the assessee submitted that the appeals are time barred by 29 days. In this regard, the Ld. Counsel for the assessee filed condonation petition as well as affidavit. For the sake of completeness, Para 7 of the said affidavit is extracted as follows:

“7. That I had opted out of service of notices/order through e-mail by selecting “No” against the question “whether notices/communication may be send on email? In Form 35 [appeal before CIT(Appeals)]. Despite selecting ‘NO’ against relevant column, notice/order u/s. 250 of the Act was not sent physically through speed post or courier as prescribed in sec.282 of the Income Tax Act, 1961.”

As evident from the aforesaid Para-7 of the said affidavit that the assessee has opted out for service of notices/communications through email by selecting “No” against the question “whether notices/communications 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. It was submitted by the Ld. Counsel for the assessee that there was no physical service of order u/s.250 of the Act to the assessee.

2. The Ld. Sr. DR did not raise any objection as regards the condonation of delay involved in the captioned appeals.

3. Having heard the submissions of the parties herein on the ground of limitation, I am 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, taking guidance from the following judicial pronouncements viz. (i) Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025; (ii) Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025; and (iii) 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 said delay of 29 days involved in the captioned appeals is condoned....."

3. At the time of hearing, parties herein conceded that the facts, circumstances and issues involved in all these appeals are absolutely identical and similar. On hearing submissions of the parties, all the matters are heard together and disposed of vide this consolidated order.

4. The common fact emanating from all these three appeals is that the Ld. CIT(Appeals)/NFAC had not condoned the delay in filing appeals before the said Forum and had dismissed the appeals in *limine* without any adjudication on merits. In ITA No.516/RPR/2025, there is delay of

588 days i.e. 1 year 7 months 9 days. Similarly in ITA No.517/RPR/2025, there is delay of 409 days i.e. 1 year 1 month 13 days and in ITA No. 518/RPR/2025, there is delay of 351 days i.e. 11 months 16 days. The assessee had filed common submissions explaining the reasons for delay and therein, the assessee had tried to explain that he is not well-versed with the technology and was fully dependent on the accountant who had fallen sick and suffered major health issue. Due to these reasons, the assessee was not aware of the proceedings and the notices for hearing remained un-complied with. However, there is no evidence placed on record by the assessee proving illness of the accountant neither any affidavit has been filed. At the same time, the Ld. CIT(Appeals)/NFAC had dismissed these appeals in limine on the ground of delay itself. Section 249(3) of the Income Tax Act, 1961 provides the power to the Ld. CIT(Appeals)/NFAC if sufficient cause is furnished by the assessee for the delay caused and in such scenario, the Ld. CIT(Appeals)/NFAC may condone such delay. Therefore, there is discretion granted since the word “may” has been incorporated instead of word “shall” and it is on the assessee to provide sufficient reason for condonation of such delay. At the same time, Section 249(3) of the Act has to be read a/w. 250 (4) & (6) of the Act. Meaning thereby, in exercising such discretion as envisaged u/s. 249(3) of the Act, the Ld. CIT(Appeals)/NFAC shall have to conduct enquiry and examine the submissions regarding the condonation of delay.

5. In the captioned matters, first of all the assessee has not furnished relevant evidence supporting the grounds for condonation of delay. At the same time, the Ld. CIT(Appeals)/NFAC had also not conducted any enquiry regarding the genuineness before dismissing the appeals in limine on the ground of limitation. The **Hon'ble High Court of Bombay** in the case of in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)** has categorically held that the appellate authority more-so quasi-judicial authority needs to deal with merits of the matter and the Ld. CIT(Appeals)/NFAC is not possessed with any power to dispose off appeals in limine either on the ground of delay or for non-prosecution by the assessee. In the aforementioned case the Hon'ble High Court had observed as follows:

"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.”

6. Further, in these facts and circumstance, the **Hon’ble Supreme Court** in **Raheem Shah & ANR Vs. Govind Singh & Ors (Civil Appeal No.4628 of 2023)**, have held that “we are heedful to state that, while dealing with tax litigation, the Ld. CIT(Appeals)/NFAC being a quasi-judicial authority was expected to adopt justice oriented approach rather resorting to iron-cast technical one”.

7. Considering the entire facts and circumstances, in the interest of substantive justice, it deems appropriate that the Ld. CIT(Appeals)/NFAC revisits the matter **firstly** to decide regarding condonation of delay in terms with Section 249(3) r.w.s. 250(4) & (6) of the Act; and **secondly** following the mandate of the aforesaid judicial pronouncements shall call for relevant submissions and decide the matter on merits after necessary enquiry. At the same time, the assessee is directed that this being the final opportunity provided to him, he shall have to justify the sufficiency in the

reasons for condonation of delay before the Ld. CIT(Appeals)/NFAC through relevant evidence and submissions representing the matters on merits.

8. In view thereof, I set-aside the respective orders of the Ld. CIT(Appeals)/NFAC and remand the matters back to its file for denovo adjudication complying with the principles of natural justice.

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

10. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open court on 22nd day of September, 2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 22nd 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, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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