

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

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT**

**ITA No.631/PUN/2025  
Assessment Year : 2017-18**

Dande Madhusudan Jaikrishana HUF M/s Jaikrishna Shrikrishna Shivaji Building, Shivaji Road, Nashik Road, Nashik – 422101	<b>Vs.</b>	ITO, Ward 1(5), Nashik
<b>PAN : AABHD8764R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri C.D. Upasani  
Department by : Ms. Sailee Dhole, JCIT  
(through virtual)

Date of hearing : 24-09-2025  
Date of pronouncement : 25-09-2025

**ORDER**

**PER R. K. PANDA, VP :**

This appeal filed by the assessee is directed against the *ex-parte* order dated 30.11.2023 of the Ld. CIT(A) / NFAC, Delhi, relating to assessment year 2017-18.

2. There is a delay of 400 days in filing of this appeal before the Tribunal for which the assessee has filed a condonation application along with an affidavit explaining the reasons for such delay which is due to illness of his Counsel who was under medical treatment. Further, the assessee was also suffering from cancer. Relying on various decisions the Ld. Counsel for the assessee submitted that the delay in filing of the appeal should be condoned.

3. The Ld. DR on the other hand strongly opposed the condonation application filed by the assessee.

4. I have heard the rival arguments made by both the sides on the issue of delay in filing of the appeal including the contents of the condonation application filed along with the affidavit of the assessee.

5. I find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

6. I find recently the Hon'ble Supreme Court in the case of Inder Singh Vs. The State of Madhya Pradesh reported in 2025 LiveLaw (SC) 339 has held as under:

*“14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.”*

7. Considering the totality of the facts of the case and in the light of the decisions of Hon'ble Supreme Court cited (supra), the delay in filing of the appeal is condoned and the appeal is admitted for adjudication.

8. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the Ld. CIT(A) / NFAC confirming the addition of Rs.32,59,830/- made by the Assessing Officer on account of difference in the GP rate of Rs.5,61,330/- and unexplained cash deposit u/s 69A of Rs.26,98,500/- made during the demonetization period in the order passed u/s 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

9. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 01.11.2017 declaring total income of Rs.5,77,310/-. The return was processed by the CPC and thereafter selected for scrutiny under CASS for the reason that there are cash deposits during the demonetization period as per SFT-14/FIU/ITR. Accordingly statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. However, in absence of any compliance to the various notices issued by the Assessing Officer, he proceeded to complete the assessment u/s 144 of the Act and made addition of Rs.5,61,330/- on account of GP addition. Further, in absence of any explanation from the side of the assessee to explain the source of cash deposited during the demonetization period, he made the addition of Rs.26,98,500/- u/s 69A of the Act.

10. Since the assessee did not respond to any of the notices issued by the office of the Ld. CIT(A) / NFAC, the Ld. CIT(A) / NFAC in the *ex-parte* order passed by him sustained the additions made by the Assessing Officer.

11. Aggrieved with such order of Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

12. The Ld. Counsel for the assessee submitted that due to illness of the assessee who was suffering from cancer he was not in a position to make any submission. He submitted that in the interest of justice, the assessee should be given one more opportunity to substantiate his case by filing the requisite details before the Assessing Officer.

13. The Ld. DR on the other hand strongly objected to the arguments advanced by the Ld. Counsel for the assessee. She submitted that adequate opportunities were granted by the Assessing Officer as well as the Ld. CIT(A) / NFAC but there was scant regard to the statutory notices issued by the department. Therefore, under these circumstances, the order of the Ld. CIT(A) / NFAC should be upheld and the grounds raised by the assessee be dismissed.

14. I have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC. It is an admitted fact that due to non-compliance to the statutory notices issued by the Assessing Officer he

proceeded to complete the assessment u/s 144 of the Act and made addition of Rs.32,59,830/- to the total income of the assessee which has been upheld by the Ld. CIT(A) / NFAC due to non-submission of any details before him. It is the submission of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate his case by filing the requisite details before the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant one final opportunity to the assessee to substantiate his case by filing the requisite details and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Assessing Officer on the appointed date and make his submissions, if any, without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 25<sup>th</sup> September, 2025.

**Sd/-**  
**(R. K. PANDA)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 25<sup>th</sup> September, 2025  
GCVSR

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे  
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	24.09.2025		Sr. PS/PS
2	Draft placed before author	24.09.2025		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			