

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member
and
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /ITA No.410/Viz/2025
(निर्धारण वर्ष/Assessment Year:2021-22)

Jaybheri Enterprises, Visakhapatnam. PAN: AAOFJ1639A (Appellant)	Vs.	Income Tax Officer, Circle-1(1), Visakhapatnam. (Respondent)
निर्धारिती द्वारा/Assessee by:	Sri C. Subrahmanyam, CA	
राजस्व द्वारा/Revenue by:	Sri MN. Murthy Naik, CIT-DR	
सुनवाई की तारीख/Date of Hearing:	24/09/2025	
घोषणा की तारीख/Date of Pronouncement:	30/09/2025	

आदेश / ORDER

PER. RAVISH SOOD, JM :

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 11/12/2024, which in turn arises from the order passed by the Assessing Officer under Section 144 r.w.s 144B of the Income

Tax Act, 1961 (for short, "Act"), dated 18/12/2022 for A.Y. 2021-22.

2. The assessee has assailed the impugned order on the following grounds of appeal before us:

1. That under the facts and circumstances of the case the orders passed U/s. 144 r.w.s 144B of the IT Act, dated 18/12/2022 that were upheld by the Ld. CIT(A), NFAC vide orders passed U/s. 250 of the IT Act, dated 11/12/2024 are contrary to the facts of the case.
2. The Ld. CIT(A) disposed of the appeal, ex parte, without granting a reasonable opportunity to the assessee, thereby violating the principles of natural justice.
3. The disposal of the appeal ex-parte by the Ld. CIT(A) is against the provisions of section 250(6) of the IT Act which obligates the CIT(A) to dispose of the appeal on merits.
4. The Ld. CIT(A) failed to appreciate that the assessee had made contractual payments of Rs. 1,10,43,654/- and Rs. 4,48,43,233/- to sub-contracts, after deducting tax at source in compliance with the IT Act. The assessee furnished all necessary evidence to substantiate the genuineness of these payments, therefore, the disallowance made by the Assessing Officer and upheld by the CIT(A) on the ground of non-response from the subcontractor to the notice U/s. 133(6) is erroneous.
5. The Ld. CIT(A) has erred in upholding the addition of Rs. 83,56,321/- on the alleged ground of variation between the turnover reported in the GST returns and that disclosed in the income tax returns. The said observation is factually incorrect, as there is no such discrepancy. In view of this, the addition sustained by the CIT(A) is unwarranted and is liable to be deleted.
6. For these and other reasons that are to be urged at the time of hearing of the case the appellant prays that the orders passed U/s. 250 of the IT Act are liable to be set-aside."

3. Succinctly stated, the assessee firm which is engaged in the wholesale business of trading in metals and metal ores had filed

its return of income for the AY 2021-22 on 31/03/2022, declaring an income of Rs. 78,66,310/-. The return of income filed by the assessee firm was initially processed as such U/s. 143(1)(a) of the Act. Subsequently, the case of the assessee firm was selected for scrutiny assessment U/s. 143(2) of the Act.

4. As the assessee firm, had despite sufficient opportunities, failed to comply with the notices issued by the AO U/s. 142(1) of the Act, therefore, the latter was constrained to frame the assessment vide his order passed U/s. 144 r.w.s 144B of the Act, dated 18/12/2022, determining the income of the assessee at Rs. 7,21,09,520/- after making two additions, viz., (i). disallowance of the assessee's claim for deduction of contract expenses; Rs. 5,58,86,887/-; and (ii). the addition of the of the mismatch in the sales reported in GSTR-3B-R and the return of income filed by the assessee firm for the subject year: Rs. 83,56,321/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). However, as the assessee firm failed to participate in the proceedings before the CIT(A), therefore, he was constrained

to dismiss the appeal vide an ex parte order. For the sake of clarity, the observations of the CIT(A) are culled out as under:

5. Ground No. 2 to 5

The appellant has contended against the addition made by the AO on account of contractual payments made to the tune of s. 5,58,86,887/- and Rs. 83,56,321/- on account of difference between turnover in ITR and GST return. However, the appellant did not submit any evidence in support of its claim.

5.1 During the course of appellate proceedings, following the principles of natural justice, the appellant was issued several hearing notices asking to file the details and evidence in support of its claim, however, the appellant remained silent against the said hearing notices. The appellant had opted same attitude during the course of assessment proceedings, and the AO had no option except to conclude the assessment based on the material on record.

5.2 It is a settled law that in the absence of any explanation or if the explanation offered is not satisfactory, the Assessing Officer is empowered to disallow any claim made by the appellant and the AO did the same.

6. At the appellate stage, the appellant failed to follow the procedural requirements in complying with the notices and also did not provide any evidence to support the grounds for their appeal. This lack of compliance with the necessary proceedings is treated ignorance towards appellate proceedings. The deeming provisions in the Act, empowers the AO to disallow any claim of the appellant which are not supporting with substantial evidences. At the appellate stage, the appellant was given opportunities to press its points before the undersigned. However, the appellant remained ignorant against the notices issued by this office. From the conduct of the appellant, it is inferred that he has nothing to state against the action of the AO and also not willing to pursue the appellate proceedings anymore. Therefore, in such circumstances, the grounds raised by the appellant become baseless. Thus, the additions made by the AO are hereby confirmed and the **ground Nos. 1 to 4 raised by the appellant are hereby dismissed accordingly.**

7. In the result, the appeal filed by the appellant is **dismissed.**

6. The assessee firm being aggrieved by the order of the CIT(A), has carried the matter in appeal before us.

7. Sri C. Subrahmanyam, Chartered Accountant, the Learned Authorized Representative (for short "Ld. AR") for the assessee

firm, at the threshold of the hearing of the appeal, submitted that the present appeal involved a delay of 115 days. Elaborating on the reasons leading to the delay in filing the appeal, the Ld. AR submitted that the same had crept in for the reason that the partner of the assessee firm, viz. Shri. Patibandala Shiva Koti Babu, had during the relevant period met with an accident and suffered a fracture of his right ankle. Elaborating further on his contention, the Ld. AR submitted that the aforesaid partner of the assessee firm had remained confined to bed for a period of four weeks, and thereafter was taken unwell with Dengue fever. The Ld. AR submitted that as the assessee firm had for *bonafide* reasons delayed the filing of the present appeal, therefore, the same in all fairness be condoned. The Ld. AR in support of his aforesaid contention had drawn our attention to the application filed by the assessee seeking condonation of the delay supported with a medical certificate and an “affidavit”, dated 14/07/2025.

8. Per contra, the Learned Departmental Representative objected to the seeking of condonation of delay involved in filing of the present appeal by the assessee firm.

9. We have heard the Learned Authorized Representatives of both the parties on the issue of delay involved in the present appeal. Although, we are clear in our mind that an appellant ought to be vigilant regarding filing of the appeal within the prescribed time limit contemplated under law, but at the same time cannot remain oblivious of certain compelling circumstances which for bonafide reasons could lead to a delay in filing of the appeal. We are of the view that as in the present case before us, there are justifiable reasons leading to the delay of 115 days in filing of the appeal by the assessee firm, therefore, we condone the same. Our aforesaid view is supported by the recent decision of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur** in **Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025**. The Hon'ble Apex Court while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of delay of 166 days by the Income Tax Appellate Tribunal, Raipur Bench, had observed, that a justice oriented

and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay involved in filing of the appeal.

10. Apropos, the merits of the case, the Ld. AR submitted that though the assessee firm had in its Memorandum of Appeal filed before the CIT(A) i.e., "Form-35" opted out of service of notices/communication through email, but no physical/hard copies of any of the notices intimating the fixation of the appeal on either of the six occasions (as pointed out in the CIT(A) order) was ever served upon him. The Ld. AR to buttress his aforesaid claim had drawn our attention to "Form-35" filed by the assessee firm before the CIT(A). It was, thus, the Ld. AR's claim that as the assessee firm had remained divested of an opportunity to defend his claim that no addition was called for in its case, therefore, the matter, in all fairness be set-aside to the file of the CIT(A) with a direction to re-decide the appeal after affording a reasonable opportunity of being heard to the assessee firm.

12. We have thoughtfully considered the contentions advanced by the Learned Authorized Representatives of both the parties in the backdrop of the facts discernible from the record.

13. Admittedly, it is a matter of fact discernible from the record that the assessee in the Memorandum of Appeal in "Form-35" had opted out of service of notices/communications from the CIT(A) office through email. For the sake of clarity, the relevant portion of Form-35 is culled out as under:

Personal Information :	
Name of Entity	JAYBHERI ENTERPRISES
PAN	AAOFJ1639A
TAN	-
Address	14-1-122(10), MAHARIPETAVISAK HAPATNAM, Visakhapatnam (Urban), Maharanipeta S.O, Andhra Pradesh, INDIA, 530002
Mobile No.	7396841051
STD code	
Landline No.	
Email Address	jaybherient@gmail.c om
Whether notices/communication may be sent on email?	No

14. Further, we find that on neither of the six occasions on which hearing of the appeal was fixed by the CIT(A) i.e., on 01/03/2023; 05/04/2024; 30/04/2024; 10/05/2024; 16/07/2024 & 06/11/2024 any physical/hard copy of notice intimating the fixation of the hearing of the appeal was ever served upon the assessee firm. Rather, all that can be gathered from the CIT(A) order is that the aforesaid notices were dropped in the ITBA portal account of the assessee firm. On a perusal of "Form-35", we find that not only the assessee had opted out of the service of the notices/communications from the CIT(A) office through e-mail, but at Sl No. 17, had specifically provided the address at which it had requested that the notices be forwarded to him. However, as observed herein above, we find that nothing has been brought on record which could reveal that on either of the six occasions any physical/hard copy of the notices intimating the fixation of the hearing of the appeal was ever served upon the assessee firm.

15. Be that as it may, we are of the firm conviction that as the assessee firm, for no fault on its part, had remained divested of a sufficient opportunity of participating in the proceedings before the

CIT(A) and defend its case before him, therefore, the matter in all fairness requires to be restored to his file with a direction to redecide the appeal. We thus, set-aside the matter to the file of the CIT(A) with a direction to re-adjudicate the appeal based on a speaking and reasoned order. Needless to say, the CIT(A) shall in the set-aside proceedings afford a reasonable opportunity of being heard to the assessee firm.

16. Resultantly, the appeal filed by the assessee firm is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced U/Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 30th September, 2025.

Sd/- (BALAKRISHNAN S.) ACCOUNTANT MEMBER	Sd/- (RAVISH SOOD) JUDICIAL MEMBER
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Hyderabad,
Dated 30th September, 2025
**OKK / SPS*

Copy to:

S.No	Addresses
1	Jaybheri Enterprises, 14-1-122/10, Raja Sagi Residence, Nowroji Road, Mharanipeta, Visakhapatnam-530002,

	Andhra Pradesh-530002.
2	ITO, Circle-1(1), Pratyakshakar Bhavan, Visakhapatnam.
3	The Pr.CIT, Visakhapatnam
4	The DR, ITAT Visakhapatnam Benches
5	Guard File

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ITAT, VISAKHAPATNAM