

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

[Virtual Court]

Before

**MS. MADHUMITA ROY, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 351/PAT/2025
Assessment Year: 2017-18**

| | | |
|------------------------|-----|---------------------------|
| Nitesh Dutt Jha | Vs. | ITO, Ward-3(5), Madhubani |
| (Appellant) | | (Respondent) |
| PAN: BCXPJ2950A | | |

Appearances:

Assessee represented by : None (Adjournment Application).

Department represented by : Ashwani Kr. Singal, JCIT.

Date of concluding the hearing : 06-October-2025

Date of pronouncing the order : 07-October-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 2017-18 dated 25.10.2024, which has been passed against the assessment order u/s 144 of the Act, dated 23.11.2019.

1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 210 days. An affidavit seeking condonation of delay has been filed by the assessee stating as under:



“I Nitesh Dutt Jha age about 35 years Proprietor of Bamboo Trading S/o-Shankar Dutt Jha R/o Village- At- Shiv Mandir, Tilak Chowk, P.s. and Dist-Madhubani (Bihar) 847211 do hereby solemnly affirm and state as follows:-

- 1. That I am a citizen of India and residing at the above mentioned address.*
- 2. That I am the Proprietors of Bamboo Trading with agriculture product.*
- 3. That the appellatant Order is deemed to have been served on 25.10.2024, it self on the day of passing of the Order was passed online the limitation for filing the appeal before this Hon'ble bench is 25.10.2024 and the appeal is being filed on before 29.07.2025 before the Hon'ble Tribunal, Therefore, there is delay of 210 days in filing the appeal.*
- 4. That delay in filing the appeal is due to the reason that the appellatant had engaged tax for making Income Tax Compliances. The said appellatant did not surprise the assessee of the first appeal Order being dismissed by the appellate authority. It would kindly be appreciated that these day Income Tax Intimations is being issued online and the appellatant does not access its email in routine course, as such the appellatant has taken step to file the appeal immediately on coming of knowledge of the dismissed of the first appeal. It would gratuitously be appreciated that delay in filing the appeal is due to reasons beyond the control of the appellatant.*

It is therefore humbly prayed that your Lordship would be kind enough the condone the delay in filing the appeal and allow the appeal filed by the appellatant to be proceeded with.”

1.2. Considering the affidavit 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) On the facts and in the circumstances of the case and in law the ld. CIT(A), NFAC was not justified in not accepting the ground of appeal raised to the effect that ex parte assessment finalized u/s 144 was not valid in view of the fact and that no show cause notice as required by 2 proviso to section 144(1) was issued and served.

(2) The learned CIT(A) as well as Learned Assessing Office, despite frequent non-compliance from the end of appellatant, have never got the notice served physically upon the appellatant either through notice server or inspector of

office. it is gross violation of the provision of acts. Notice Sent through e-mail address and income -tax portal is not sufficient enough for proper service of notice. Mere uploading of communication in e-portal not sufficient under Income Tax: ITAT Agra Aastitva Jain Family Trust Vs ITO (ITAT Agra) Related Assessment Year: 2015-16 Aastitva Jain Family Trust Vs ITO (ITAT Agra). Mere Uploading Income Tax Notice on Assessee's E-Portal Not Proper Service.

(3) On the facts and in the circumstances of the case and in law the Id. CIT(A) NFAC, was not justified in confirming the action of the AO of invoking the provisions of section 69A of the act, in the absence of any ingredients of this section, the action is vitiated in law and it be held accordingly.

(4) That the service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named- (a) by post or by such courier services as may be approved by the Board

(5) Service of Notice of hearing under Section 142(1) and scrutiny assessment on email address and on income tax portal is not sufficient enough for compliance of proper service of notice. - Assessment Invalid and Void ab initio: it is relevant to pint out here that all notice have been dispatched on e-mail address of tax consultant.

(6) The Delhi Bench of the ITAT in ITO v. R.K. Gupta [2019] 73 ITR (Trib) 9 (Del.) held that non-service of notice deprives the assessee of the opportunity to present his case, rendering the entire reassessment invalid.

(7) Similarly, the Supreme Court in CIT vs. Thayaballi Mullajeevaji Kapasi (1967) 66 ITR 147 (SC) held that improper service of notice invalidates the entire proceedings. In Dr. K.C. Verma v. UOI (2017) 395 ITR 301 (All.), the Allahabad High Court reiterated that service of notice of scrutiny assessment under Section 143(3) is mandatory, and without valid service, the assessment order is void.

(8) The AO passed the ex-parte assessment under Section 144 without issuing a show-cause notice or granting the appellant an opportunity to be heard. In ITO V. (ITA No. the ITAT Delhi Shambhu Dayal Agarwal 2467/Del/2015), emphasized that an ex-parte assessment order passed without proper notice is legally unsustainable and liable to be quashed.

(9) Interest 234A, 234B, under Sections and 234C was arbitrarily charged, despite the fact that the delay in responding to the notices was caused by non-receipt of notices at the correct address. In CIT v. Ranchi Club Ltd. (2001) 247 ITR 209 (SC), the Supreme Court held that interest under these



sections cannot be mechanically imposed when reasonable cause exists for the delay.

(10) Aggrieved with the said order, the assessee filed appeal before the Id. CIT(A). Herein again, the assessee did not appear before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee on the ground that the assessee failed to substantiate its claim made before him.

(11) The learned CIT (A) NFAC failed to appreciate to this fact the amount of Rs16,05,972/ credited to the account of appellant is not of his own, rather the amount is of trust, where the appellant is employed as project director and trust transferred Rs16,72,987/- to the account of appellant to get the work of trust executed.

(12) the Appellant craves to leave to add/alter any / all grounds of appeal before or at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessment in this case was completed under section 144 of the Act after making addition of ₹16,05,000/- u/s 69A of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued 5 notices for hearing but as there was no response, the appeal was dismissed on account of non-prosecution. Aggrieved with the order of the Ld. CIT(A) the assessee has filed the appeal before the Tribunal.

4. Even before us, none appeared on behalf of the assessee and the appeal was heard with the assistance of the Ld. DR. The Ld. DR stated that neither before the Assessing Officer not even before the Ld. CIT(A) the assessee appeared and, therefore, at both the stages *ex parte* orders were passed. In the ground of appeal, the assessee has agitated on the issue of adequate opportunity not being allowed. In ground No. 11, it is stated that the amount credited in the account of the assessee is of the trust where the assessee was employed as a project director and the trust transferred ₹ 16,72,987/- to the account of the assessee to get the work executed. When enquired by the Bench as to whether the matter may be remanded to the Ld. AO, The Ld. DR, though supported the



order of the Ld. CIT(A) but did not express any serious objection to the proposal to remand the matter to the Ld. AO.

5. We have gone through the facts of the case and perused the record and the order of the Ld. CIT(A). We find that at both the stages of assessment order before the Ld. AO as well as before the Ld. CIT(A) in the appeal, proper representation was not made on behalf of the assessee. After considering the facts of the case, we deem it appropriate in the interest of justice and fair play that another opportunity needs to be provided to the assessee to represent his case properly before the Ld. AO as the assessee claims to have sufficient evidence in support of the relief claimed. We, therefore, set aside the order of the Ld. CIT(A) as well as of the Ld. AO and remit the matter to the Ld. AO to frame the assessment afresh, after affording an opportunity of being heard to the assessee and thereafter pass an order in accordance with law. The assessee shall not seek unnecessary adjournment and shall be at liberty to file all evidence in his possession for the relief claimed. For statistical purpose, the appeal of the assessee is partly allowed.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 7th October, 2025.

Sd/-

[Madhumita Roy]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 07.10.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Nitesh Dutt Jha, Shiv Mandir, Tilak Chowk, Madhubani, Bihar, 847211.**
2. **ITO, Ward-3(5), Madhubani.**
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