

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

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.116/Alld/2025
Assessment year:2011-12

Vishnu Kumar Kesarwani, 4 Khushhal Parwat, Prayagraj-211003 PAN:AUAPK8058N (Appellant)	Vs.	Income Tax Officer, Ward-2(3), Allahabad (Respondent)
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Appellant by	Shri Mayank Arora, Advocate
Respondent by	Shri A. K. Singh, Sr. D.R.

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) This appeal vide I.T.A. No.116/Alld/2025 has been filed by the assessee for assessment year 2011-12 against impugned appellate order dated 21/03/2024 (DIN & Order No.ITBA/APL/S/250/2023-24/1063130244(1) of Addl/JCIT of Commissioner of Income Tax (Appeals) ["ADDL/JCIT(A)" for short]. The grounds raised by the assessee are as under:

1. Because the Learned Commissioner of Income Tax (Appeals) has erred to pass Ex-parte Appellate order without considering the facts and circumstances of the case and has simply confirmed the order passed by the Ld. Assessing Authority.
2. Because the appellant was not given any proper opportunity of being heard since there was no online service of notices through emails. The appellant was unaware of any online notice.
3. Because the appellant had filled Email as 'info@casks.in' in Form 35 and the First Appellate Authority has sent the intimation of Enablement of Communication Window on 03-11-2022 to 'efillingitr11@yahoo.com' & to 'info@casks.in' as CC. The Appellant was under bonafide belief that he would also receive further communications / notices on his email to which reply will have to be filed. Copy of such sheet is attached herewith as **Annexure No. VIII**.
4. Because no further notices were issued on the designated Email: 'info@casks.in' and so neither the Appellant nor its Authorized Representative was informed of any notice for Appellate proceedings. In this support, the Appellant is attaching herewith two Status Reports of Notices issued vide Communication Reference Id 100068289396 on 09-10-2023 & 100076476282 on 12-03-2024. It is very clear from such sheets that no email was sent by the First Appellate Authority 'info@casks.in' and it was sent on 'efillingitr11@yahoo.com' to which the Appellant has no access at all. Copies of both the status of notices are attached herewith as **Annexure No. IX**.
5. Because no proper service has been made by the First Appellate Authority since it has selected the option 'YES' for service of notices through email in Form 35. So the Appellant was not given any proper opportunity of being heard which is against the principles of natural justice.
6. Because in fact it can be said there has been no service of any notice at all since the First Appellate Authority has not followed the provisions of Sec 282 of Income Tax Act and Rule 127 of Income Tax Rules, which deals with the service of notice. Copies of

extract of Sec 282 and Rule 127 are attached herewith as Annexure No. X & XI respectively.

7. Because the Ld. Assessing Authority and Ld. First Appellate Authority have erred in treating the investments as unexplained without first ascertaining the fact that such amount is from business, opening cash in hand and amounts received from opening debtors.
8. Because the Appellant has not been provided with proper opportunity of presenting his case before the Assessing Authority and also before the First Appellate Authority since he was unaware of any such online notices.
9. Because the Appellant is also relying upon the judgement of Hon'ble ITAT "A" Bench, Ahmedabad in case of Manav Seva Mandir Vs. CIT (E), Ahmedabad (ITA No. 550/AHD/2024), wherein under similar circumstances, the Hon'ble ITAT has remanded the case back to the CIT (E) for making fresh decisions on merit after giving reasonable opportunity of being heard. Copy of ITAT judgement is attached herewith for your kind perusal and record as **Annexure - XII**.
10. Because the Ld. Assessing Authority and Ld. First Appellate have erred in believing in wrong information and has arbitrarily assessed income in haste merely on conjectures and surmises.
11. Because the initiation of penalty U/s 271(1)(c), is wrong and illegal.
12. Because the order passed U/s 147 / 144 by the Ld. Assessing Authority and the order passed U/s 250 by the Ld. First Appellate Authority is bad in law and against the facts.

(B) In this case assessment order dated 26/12/2018 was passed under section 147/144 of the I. T. Act whereby the assessee's total income was assessed at Rs.10,00,500/-. The assessment order was passed by the Assessing Officer ex-parte qua the assessee. The assessee's appeal against the assessment order was dismissed by the learned CIT(A) vide impugned appellate order dated 21/03/2024. The aforesaid order dated 21/03/2024 of the learned CIT(A) was also passed ex-parte qua the appellant assessee. Aggrieved, the assessee has failed the present appeal in the Income Tax Appellate Tribunal.

(C) The appeal filed by the assessee is beyond the time prescribed u/s 253(3) of Income Tax Act, 1961 ("the Act" for short). The assessee has filed application for condonation of delay in filing of this appeal along with an affidavit. The application for condonation of delay is reproduced below for the ease of reference:

I, Vishnu Kumar Kesarwani S/o Shri Lal Ji Kesarwani do hereby solemnly affirm and state as under:

1. That I Vishnu Kumar Kesarwani S/o Shri Lal Ji Kesarwani R/o 4 Khushhal Parwat, Prayagraj - 211 003 having PAN: AUAPK8058N am acquainted the facts deposed as under.
2. That the date of online service of Ex-parte Appellate Order for the AY 2011-12 passed U/s 250 dated 21-03-2024 is 21-03-2024. Thus this appeal should have been filed on or before 20-05-2024, but it is being submitted today, i.e. 17-06-2025 with a delay of 393 days for the reasons given hereunder.

That there was no service of this Ex-parte Appellate Order on the designated email 'info@casks.in', (as mentioned in Form 35 attached) so the Appellant was not aware of such order being passed on 21-03-2024.

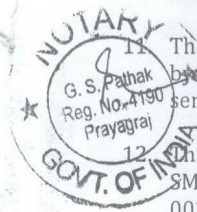
That recently when the Appellant was in need of his ITR for some loan purposes that he contacted the person concerned who had filed his ITR that he got to know from the Income Tax portal that an Ex-parte Appellate Order has been filed against him.

5. That on knowing such fact that the Appellant met his present Counsel who advised him to file an appeal before the Hon'ble Income Tax Appellate Tribunal, Allahabad Bench against this said impugned order, without any further delay.
6. That the Appellant had retrieved his login credentials of Income Tax portal from the person concerned who had filed his ITR to his present Counsel for accessing orders, notices, etc. wherein all the relevant documents for filing the appeal before Hon'ble ITAT were available except Assessment Order passed by Ld. Income Tax Officer, Ward - 2 (3), Allahabad U/s 147 / 144 dated 27-12-2018. Such order was not available for download in the Form 35 filed section wherein there is no option for 'Download Attachment' which is a technical fault of the website / portal since it is mandatory to upload various documents like order appealed against, etc. and which is generally easily accessible from the website. Copy of Appeal filed section as obtained from the portal in which 'Download Attachment' is missing is attached herewith for your kind perusal and record.
7. That the Appellant tried his best efforts to trace the Assessment Order dated 27-12-2018 but due to disturbances during COVID - 19 period; wherein one of his

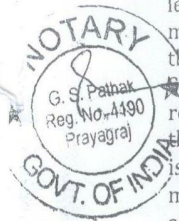


close relatives who had actually helped him to get the Appeal filed in 2019 and had been looking after his tax affairs had unfortunately expired, he was unable to trace such Assessment Order.

8. That the Appellant applied for obtaining Certified copy of Assesement Order passed by Ld. Income Tax Officer, Ward - 2 (3), Allahabad U/s 147 / 144 dated 27-12-2018 on 19-05-2025 from Income Tax Office, Allahabad and the same was obtained by the Appellant on 10-06-2025. Copy of Application for obtaining certified copy and its letter dated 10-06-2025 is attached herewith for your kind perusal and record.
9. That the Appeal was prepared during 11th June 2025 to 13th June 2025 and the Court Fees was deposited on 16th June 2025 since 14th and 15th June 2025 were holidays due to Saturday and Sunday and thus this Appeal is being submitted today, i.e. 17-06-2025 without any further delay.
10. That it is clear that there were technical latches on the part of the Website / Portal, wherein the Notices through Email to the Appellant was not being served properly and also the required Assesement Order was also not available. The Appellant was diligent enough to take appropriate actions to file this Appeal as and when he got informed.
11. That there was no intentional default on part of the appellant as it was prevented by sufficient cause from submitting this apoeal within time since no order was served on the designated email.
12. That the appellant is relying upon the judgement of Hon'ble ITAT Delhi Bench SMC: New Delhi in case of Mohammad Saleem Vs. ITO Ward - 63 (3), Delhi - 110 002 (ITA No. 28/DEL/2023), wherein the Hon'ble ITAT has condoned the delay caused by due to lack of knowledge and no means to access to electronic means of communication. Copy of ITAT judgement is attached herewith for your kind perusal and record.
13. That the appellant is also relying upon the judgement of Hon'ble ITAT "A" Bench, Ahmedabad in case of Manav Seva Mandir Vs. CIT (E), Ahmedabad (ITA No. 550/AHD/2024), wherein under similar circumstances, the Hon'ble ITAT has condoned the delay caused due to the fact that the notice was not properly served through email. Copy of ITAT judgement is attached herewith for your kind perusal and record.
14. That the Appellant is also relying upon the judgement of Hon'ble ITAT, Bangalore "C" Bench, Bangalore in case of Hindustan Marble & Granite Vs. DCIT, Central Circle-1(4) [ITA No. 1091 / Bang / 2024], wherein the Tribunal condoned 288-day delay due to the notices being sent to the wrong email ID and remanded the matter back to the Commissioner of Income Tax (Appeals) for fresh adjudication. Copy of such judgment is attached herewith for your kind perusal and record.



15. That the Appellant also wishes to rely on the judgment of Hon'ble Supreme Court in case of Vidya Shankar Jaiswal Vs. The T.O, Ward - 2 (Ambikapur) [Special Leave Petition (Civil) No.s 26310 - 26311 / 2024], wherein the Apex Court was of the view that the Courts should adopt justice oriented and liberal approach by condoning the delay. Copy of order of Hon'ble Supreme Court is attached herewith for your kind perusal and record.
16. That above all the the appellant is relying upon the judgement of Hon'ble Supreme Court in case of Improvement Trust, Ludhiana Vs. Ujagar Singh & Others (Civil Appeal Nos. 2355 of 2008), wherein it has been held that "it is pertinent to point out that unless malafides are writ large on the conduct of the party, generally as a rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities". Copy of Supreme Court judgement is attached herewith for your kind perusal and record.
17. That the appellant is also relying upon the judgement of Hon'ble Supreme Court in case of Collector, Land Acquisition vs MST Katiji (Supra), wherein the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serve the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that 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. Copy of Hon'ble Supreme Court judgement is attached herewith for your kind perusal and record.
18. That the financial condition of the appellant deponent is not so sound and unable to deposit any part of such heavy demand.



I, Vishnu Kumar Kesarwani S/o Shri Lal Ji Kesarwani, do hereby declare that all the contents of this affidavit are true and correct to the best of my knowledge and believe.

So help me God.

Vishnu Kumar Kesarwani
(Vishnu Kumar Kesarwani)
Deponent

12-6-25
SOLEMNLY AFFIRMED BEFORE ME
On.....2025.....A.M./P.M.
Sri/Smt. *Vishnu Kumar Kesarwani*
Identified by Mr. *G.S. Pathak*
as his/her Affidavit as True & Correct which
is verified & correct

G.S. Pathak
G.S. Pathak
Public Notary
Alid., Prayagraj (U.P.)

Sign./T.I. Identified By
12-6-25

(C.1) Learned Counsel for the assessee submitted that the delay was unintentional and beyond the control of the assessee and has requested to admit the appeal for hearing. The learned Departmental Representative for Revenue did not express any objection to assessee's application for condonation of delay in filing of the appeal. In view of the foregoing, and

being convinced with the pleadings of the assessee, the delay in filing of this appeal is condoned; and the appeal is admitted for hearing.

(D) At the time of hearing, the learned Counsel for the assessee submitted that reason for non compliance of the notices issued by the office of the learned CIT(A) are also the same that led to delay in filing of this application. He explained that the designated e-mail ID provided by the assessee in Form-35 (in which appeal was filed in the office of the learned CIT(A) was info@casks.in. However the notices issued by the learned CIT(A) were not served on this e-mail and therefore, the assessee was not aware of any notice issued by the learned CIT(A). He also submitted that there was no intention on the part of the assessee to evade or avoid hearings by the learned CIT(A) and the non compliance was solely because the assessee was not aware of the notices issued by the learned CIT(A). Therefore, the learned Counsel for the assessee submitted, the assessee may be granted fresh opportunity to present his case before the learned CIT(A). The learned D.R. left the matter to the discretion of the Bench.

(E) We are satisfied that the assessee could not represent his case before the learned CIT(A) because of the fact that the assessee was not aware about the notices issued by the learned CIT(A). Further the assessee can also not be faulted for non receipt of notices because the notices were not issued to the assessee on the designated e-mail ID as submitted in Form-35. No material has been brought in our knowledge to show that any notice was served to the assessee in physical mode. In view of the foregoing, the impugned appellate order of learned CIT(A) is set aside and all the issues in dispute regarding the additions made in the assessment order are restored back to the file of the learned CIT(A) with the direction to pass fresh order

in accordance with law after providing reasonable opportunity to the assessee.

(F) In the result, the appeal of the assessee stands partly allowed for statistical purposes.

(Order pronounced in the open court on 31/10/2025)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:31/10/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T.