

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 No.573/RPR/2025

निर्धारण वर्ष / Assessment Year : 2013-14

Toran Lal Varma
House No.39, Ward-3,
Village: Kachandur, Post-Karanja,
Bhilai-490 024 (C.G.)
PAN: AKFPV6450J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Sethia, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.11.2025

घोषणा की तारीख / Date of Pronouncement : 26.11.2025

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

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 30.03.2025 for the assessment year 2013-14 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that the present appeal is time barred by 121 days. Elaborating the reasons leading to the said delay, the Ld. Counsel has submitted condonation petition a/w. affidavit dated 07.10.2025. For the sake of completeness, the affidavit dated 07.10.2025 is extracted as follows: (relevant extract)

“5. That during the appeal proceedings I duly participated and filed written submission both on legal grounds and on merits.

6. That the Id. Commissioner of Income-tax (Appeals), NFAC has decided the appeal on 30/03/2025 and was pleased to set-aside the matter to the Id. Assessing Officer for making, fresh assessment. However, the id. CIT(Appeals) did not adjudicate the legal grounds.

7. Initially, I was advised to comply with the notice issued u/s.142(1) r.w.s. 250 of the Abt. However, upon consulting another counsel practicing in the Hon'ble High Court, I was advised to prefer a second appeal on legal grounds, as in his opinion, such legal issues may not be possible to be raised at a later stage if conceded in the first round.

8. That as per my understanding there are fair chances of substantial relief in further appeal.

9. That the order of id. C1T(A) is dated 30/03/2025. As per provisions of section 253(3) of the Act the appeal ought to have been filed within two months from the end of month in

which the order sought to appeal against was passed i.e. by 31/05/2025. However, owing to the earlier professional advice the appeal has now been filed after a delay of 121 day.

10. The delay occurred solely due to the professional advice received from the tax consultant. There was no mala fide intention and the cause constitutes sufficient reasons for condonation.

11. That in connection with settled principle/legal precedents, I rely on the following cases:-

a) Vijay Vishin Meghani vs DCIT/ACIT (Bombay High Court) in iTA 493 508/2015, wherein the delay of 2984 days was condoned for the reliance was placed on advise of intinikar bona fide professional constitutes as sufficient cause.

(b) Vinay Ramsha.tandas Agarwal vs PCIT (Nagpur Tribunal) in ITA No. 110/Nag/2023 wherein it was held that where assessee believes appeal was to be filed after set-aside assessment; there is no mala fide intent.

12. That in view of above facts and circumstances it is humbly prayed that the Hon'ble Tribunal may be pleased to condone the delay and admit the appeal for adjudication in the interest of justice.”

3. The Ld. Sr. DR has not filed counter affidavit regarding condonation of delay. It was submitted by her that delay may be condoned since conduct of the assessee was bonafide and the said delay was occurred due to professional advise wrongly given to the assessee as enumerated in the affidavit.

4. Having heard the parties herein and considering the contents of the affidavits, I find merit in the prayer made by the assessee that such delay of filing appeal before the Tribunal was not deliberate or malafide and accordingly, the said delay of 121 days in filing of the appeal is condoned

in view of 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.**

5. Coming to the merits of the matter, it is noted that in this case assessment has been completed by the A.O u/s.144 of the Act and in view thereof, the Ld. CIT(Appeals)/NFAC has held and observed as follows:

“The facts of the case are that the assessee did not file return of income for AY 2013-14. Assessee's case was reopened u/s.147 on the ground that assessee had deposited cash amounting to Rs.26,55,000/- during FY 2012-13. Notice u/s.148 was issued and served on the assessee. No return was filed in response. Assessee filed explanation for cash deposits to the tune of Rs.4,54,600/-. Assessee did not comply with subsequent notices and letters issued and served upon the assessee. No explanation nor evidence in respect of unexplained cash deposits to the extent of Rs.22,00,400/- was furnished. A.O added the said amount to the income of the assessee in order in assessment u/s.144.

Aggrieved, assessee is in appeal. In appeal, the assessee has sought to file additional evidence.

With respect to cases where appeal is against assessment order passed as best judgement case u/s 144 of the Act, considering the huge pendency of appeals and disputed tax demands at the Commissioner (Appeals) stage, with effect from 01/10/2024, vide amendment of section 251 of the Act.

the Commissioner (Appeals) is empowered to set aside the assessment and refer the case back to the AO for making a fresh assessment.

The present case, where the assessee has not complied with notices in assessment proceedings but has sought to file additional evidence in appeal is a fit case for setting aside the assessment and referring the case back to the AO for making a fresh assessment.

Accordingly the assessment is set aside and case referred back to AO for making a fresh assessment.

As a result, the appeal is disposed of by setting aside the assessment order.”

6. As is discernable from the aforesaid findings of the Ld. CIT(Appeals)/NFAC, since the assessment was completed u/s.144 of the Act and that also, certain additional evidences were filed before the first appellate authority, therefore, the Ld. CIT(Appeals)/NFAC had invoked the power as mandated in Section 251 of the Act empowering the said authority to set-aside the assessment order and refer the same to the A.O for making fresh assessment. That on the ground of natural justice as well, since there was no compliance before the A.O and all the documents have been submitted before the Ld. CIT(Appeals)/NFAC, therefore, even in terms with Rule 46A(3) of the IT Rules, 1962, ground verification of such additional evidences is required and a speaking order from the A.O considering those evidence is essential in order to adjudicate the matter by the first appellate authority as per provisions of the Act. Hence, I do not

find any infirmity with the findings of the Ld.CIT(Appeals)/NFAC which is hereby upheld.

7. As per the above terms, grounds of appeal raised by the assessee stands dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in open court on 26th day of November, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 26th November, 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