

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT
MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA Nos. 538 & 732/Ind/2024 (AY: 2010-11)

Jay Krishnan Nair, 613-C, Wing Maple Leaf, Raheja Ghar, Chandivili, Mumbai, Maharashtra (PAN: AALPN8081B)	बनाम/ Vs.	NFAC, Delhi
(Appellant)		(Respondent)
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	16.06.2025	
Date of Pronouncement	24.06.2025	

आदेश / ORDER

Per Paresh M Joshi, J.M.:

This is an appeal filed by the assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the “**Act**” for sake of **brevity**) before this Tribunal. The assessee is aggrieved by the order bearing Number ITBA/NFAC/S/250/2024-25/1065879845(1) dated 20.06.2024 passed by Ld. CIT(A) u/s 250 of the Act which is hereinafter referred to as the “**Impugned order**”.

The relevant Assessment Year is 2010-11 and the corresponding previous year period is from 01.04.2009 to 31.03.2010.

2. **FACTUAL MATRIX**

Since in the both the appeals common question arises with consent of the parties they are being heard together and is being disposed off by this common order. We take ITA No.538/Ind/2024 (Assessment Year 2010-11) as lead case which deals with quantum proceedings and the decision shall apply to both cases mutatis-mutandis.

2.1 That as and by way of an assessment **order u/s 144** of the Act, the assessee's total income exigible to tax was computed and assessed at **Rs.99,45,430/-**. Income as per return was **NIL**. **Addition of Rs.99,45,428/- was made.** That the aforesaid assessment order is dated **04.12.2017** which is hereinafter referred to as the "**impugned assessment order**".

2.2 That the assessee being aggrieved by the "**impugned assessment order**" prefers **first appeal u/s 246A of the Act** before Ld. CIT(A) who by the "**impugned order**" has dismissed the appeal of the assessee on the grounds and reasons stated therein.

2.3 That the assessee being aggrieved by the "impugned order" has preferred the **instant second appeal** before this Tribunal and has raised following grounds of appeal in Form 36 against the "impugned order" which are as under:-

"1. That the assessment order u/s 144 dated 04.12.2017 passed by the Id. AO, as well as impugned appellate order dated 20.06.2024 for the AY 2010-11 passed by the NFAC is perverse and bad in law.

2. That the learned NFAC erred in rejecting the appeal filed by the appellant merely on the ground of delay, without appreciating the application for condonation filed by the appellant in its true perspective demonstrating the sufficient cause for not filing the appeal within limitation.

3. That, the delay of 2037 days in filing appeal before the Id. NFAC against the assessment order for the AY 2010-11 was due to bonafide reason and not intentional and also having sufficient cause.

4. That for the purpose of Income Tax proceedings, the Appellant was completely dependent on his Chartered Accountant, as being a Commercial Pilot, Appellant to discharge his official duties, required to travel frequently within India as well as abroad, which is evident from his service log book.

5. That appellant has, bonafidly and on the advice of his Chartered Accountant filed appeal against order u/s 271(1)(c) before the NFAC within limitation, which cannot be made ground to deny condonation of delay in filing appeal against quantum order.

6. That the authorities below erred in making addition towards the alleged unexplained investment in purchasing immovable property as, appellant was having sufficient source of income and also borrowed fund from his father as well as from home loan from bank."

3.

Record of Hearing

3.1 The hearing in the matter took place on **02.06.2025** and **16.06.2025** when the Ld. AR for and on behalf of the assessee appeared before us and interalia brought to our notice that both the orders of the lower authorities i.e. of Ld. A.O's "**impugned assessment order**" and that of Ld. CIT(A) "**impugned order**" are not at all on the merits of the case and are incomplete violation of the principles of natural justice. The Ld. AR for and on behalf of the assessee has placed on record of this tribunal three paper books from pages 1 to 54, from pages 1 to 171 and from pages 1 to 12. A compilation of case law from pages 1 to 73 too are placed on record of this tribunal. Basis paper books placed on record the Ld. AR has contended that in the "**impugned order**" the Ld. CIT(A) has erroneously held that since the assessee has failed to show any "**sufficient cause**" u/s 249(3) of the Income Tax Act, 1961 for assessee's failure to file the appeal within the prescribed period of limitation u/s 249(2) of the Income Tax Act, 1961 r.w.s. 5 of the Limitation Act the delay of **2037 days** in filing of appeal **is not condoned and appeal is not admitted.**

3.2 The Ld. AR interalia contended that assessee was a commercial pilot working with a Nigerian Airlines. That the **“impugned assessment order” u/s 144 of the Act** was passed on 04.12.2017. The 1st appeal before CIT(A) was filed on 03.07.2023 with a delay of 5 years, 5 months and 28 days. The appeal against the **“impugned assessment order”** is required to be filed within 30 days of the receipt of order. However the assessee sought condonation of delay in preferring first appeal on ground that the assessee was a commercial pilot and his source of income is salary income which he receives from time to time from various airlines. That the assessee subsequently came to know from Income Tax e-filing portal that an assessment order was passed **u/s 144 of the Act** and that there is tax demand against him. The assessee at the material time was working for Nigeria Airlines as a commercial pilot, therefore he neither received the **“impugned assessment order”** nor was available on income tax e-filing portal as he does not see income tax portal. That later on he applied for a copy of the **“impugned assessment order”** and then filed 1st appeal before CIT(A). In the whole process there was a delay in filing 1st appeal for good and

sufficient reasons and therefore same should have been condoned. However the Ld. CIT(A) in the “**impugned order**” has not considered his request for condonation of delay and has given following reasons:-

“2.2 Since the return of income for the AY 2010-11 was not filed, the AO issued notice u/s 144 of the IT Act dated 31.10.2017 for completing the assessment ex-parte. In response to the notice, one Mr. R.J. Shah filed adjournment letter on 16.11.2017. However, this letter was filed without any Power of Attorney. Thereafter, the appellant neither responded to the query letters nor furnished the details called for. Hence, the AO completed the assessment u/s 144 of the IT Act by treating the entire sum of Rs.99,45,428/- as unexplained investment of the appellant. The AO initiated penalty proceedings u/s 271F and 271(1)(c) of the IT Act also separately.

2.3 It is to be mentioned here that the appellant did not file appeal against the assessment order u/s 144 of the IT Act dated 04.12.2017. Hence, the AO proceeded with the penalty proceeding initiated u/s 271(1)(c) of the IT Act. As the appellant failed to respond to the penalty notices issued by the AO, the AO levied a penalty of Rs.30,00,000/- u/s 271(1)(c) of the IT Act vide order dated 22.06.2018. This order was duly served on the appellant and hence, he filed appeal against this penalty order on 27.07.2018. In the appeal memo, the appellant claimed that the penalty order and demand notice was served on 28.06.2018.

2.3 In spite of receipt of the penalty order, the appellant failed to file any appeal against the assessment order. The appeal against assessment order was filed only on 03.07.2023 with a brief reason for condonation of delay. As the reason given by the appellant, in his condonation petition is not supported with documentary evidences, defective memo was issued to the appellant and he was asked to substantiate his delay in filing the appeal for 2037 days. In response to the notice, the appellant filed another submission, which is reproduced below:

BEFORE THE HONORABLE COMMISSIONER OF INCOME TAX

APPEALS

NATIONAL FACELESS APPEAL CENTRE

In the matter of : *Jaikishan Nair*

PAN : *AALPN8081B*

Assessment Year : *2010-11.*

Appeal Number : *NFAC/2009-10/10316201*

Subject: Clarification in respect of Appeal application vide acknowledgment No. 347163310030723 for the A.Y.2010-11 U/s 144-Regarding

1. Introduction

The Appellant. Jaikrishnan Nair, most respectfully submits as follows:

- *Appellant's Details: Mr. Nair identifies himself as an individual assessee, a taxpayer liable to pay income tax directly. He further clarifies his profession as a commercial pilot, indicating a potentially mobile lifestyle.*
- *Source of Income: The application explicitly states that Mr. Nair's income originates from salaries received from various airlines. This information is relevant as it might explain potential challenges in receiving tax-related communications.*

2. Background and Reasons for Delay

- *Unawareness of Assessment Order: Mr. Nair explains that he became aware of the assessment order, issued under Section 144 of the Income Tax Act, 1961, only through the Income Tax e-filing portal. This suggests he might not have received the physical copy of the order due to his relocation.*

- *Relocation and Missed Communication:* The application elaborates on the reason for missing the order. Mr. Nair explains that he had relocated to Mumbai and was working for Nigeria Airways at the time the order was passed. This relocation likely caused a gap in receiving physical mail and potentially limited his access to the e-filing portal due to potential changes in his registered address or other technical reasons

3. Efforts to Rectify the Situation

- *Proactive Steps Taken:* Mr. Nair demonstrates his prompt action upon discovering the assessment order. He highlights that he applied for a copy of the order on May 31, 2023, indicating his willingness to address the issue without delay.
- *Communication and Appeal Filing:* The application details the timeline of receiving the communication from the Income Tax Department on June 8, 2023. followed by the filing of his appeal before the esteemed office on July 3, 2023. This demonstrates his expeditious response once he became aware of the order.

4. Justification for Condonation

- *Genuine and Sufficient Reasons:* Mr. Nair emphasizes that the delay in submitting the appeal arose due to genuine and sufficient reasons beyond his control. He reiterates the points about relocation and its impact on receiving the order and accessing the e-filing portal.
- *Unintended Delay:* The application underlines that Mr. Nair was not intentionally avoiding the assessment order or the appeal process. He

became aware of the situation through the e-filing portal and took immediate steps to rectify it.

5. Prayer

In view of the circumstances explained above, the Appellant humbly requests this esteemed Court to condone the delay in filing the appeal. Mr. Nair expresses his hope for a favorable consideration of his request.

6. Verification

1. Jaikrishnan Nair the Appellant, do hereby declare that what is stated above is true to the best of my information and belief".

3.3 In addition the Ld. CIT(A) has observed that in original assessment proceedings in response to notice, **one Mr. R.J. Shah** filed adjournment letter when a show cause notice u/s 144 of the Act was issued on 31.10.2017. This aspect shows that the assessee was very much aware of the ongoing assessment proceedings. Besides **"impugned assessment order"** u/s 144 by Ld. A.O even a **penalty order u/s 271(1)(c) of the Act was passed vide order dated 22.06.2018**. The penalty order was duly served on the assessee on 28.06.2018 and appeal was filed on 27.07.2018. At least at this juncture, the assessee could have filed the appeal against the **"assessment order"** dated 04.12.2017.

The Ld. CIT(A) in the **"impugned order"** therefore held that it is not a fit case to condone the delay of nearly 2037 days. The assessee reasons are false for the purpose of condonation of delay. U/s 249(2) and (3) there is **no sufficient reason** to condone the delay as the **cause shown is not sufficient** as envisaged u/s 5 of limitation Act.

3.4 The Ld. AR has submitted **an affidavit dated 14.06.2025 of one Raju Jayantilal Shah the assessee's earlier counsel (a practicing CA) who has deposed on oath that he was counsel/authorised representative of the assessee in connection with A.Y. 2010-11 and that it was due to his lapses there was delay in preferring even the 1st appeal. He has tendered unconditional and sincere apology for lapses on his part in discharging his professional duties.**

3.5 The Ld. AR has also placed on record of this Tribunal e-mails exchanged between assessee and his earlier counsel.

3.6 Per contra Ld. DR appearing for revenue has not seriously controverted the assertion including affidavit of earlier counsel. The Ld. DR however has contended that the orders of lower authorities i.e. the Ld. A.O and Ld. CIT(A) are not meritorious in

nature and matter should be set aside back to the file of Ld. A.O for fresh adjudication.

4. **Observations, findings & conclusions.**

4.1 We now have to adjudge and adjudicate the present appeal filed by the assessee on basis of the records of the case and the contentions canvassed before us during the course of the hearing. In brief we have to decide the legality, validity and the propriety of the **"impugned order"**.

4.2 We have carefully perused the records of the case as presented to this tribunal by both Ld. AR and Ld. DR to determine the legality, validity of the **"Impugned Order"** basis law and by following due process of law.

4.3 We basis records of the case and so also after hearing and upon examining the contentions are of the considered opinion that the **"impugned assessment order"** as well as **"impugned order"** are not on merits. We are of the considered view that income of the assessee is required to be computed and assessed according to law by following due process. In the instant case both at the original stage of assessment proceedings before Ld. A.O and so also at 1st appellate stage before CIT(A) due to default

of earlier counsel who was engaged by the assessee no effective steps were taken. **Old counsel's affidavit dated 14.06.2025 is self explanatory wherein he has accepted lapses on his part resulting into serious prejudices to the assessee.** Further e-mail correspondences exchanged between assessee and old counsel too proves this fact of lapses on part of earlier counsel of the assessee.

4.4 In the premises set out herein above we set aside the **"impugned order"** and remand the case back to the file of Ld. A.O to pass a fresh assessment order on *denovo basis* according to law, as soon as possible preferably within a period of six months from the date of receipt of this order.

5. **Order**

5.1 The **"impugned order"** is set aside and matter is remand back to the file of Ld. A.O to pass a fresh order which order should be reasoned one on *denovo basis*.

5.2 In result appeal of the assessee is allowed for statistical purpose.

II. **ITA No.732/Ind/2024 (Assessment Year 2010-11)** deals with **penalty issue** u/s 271(1)(c) of the Act which is

consequential to the quantum proceeding adjudicated by us in preceding para in ITA No.538/Ind/2024. Since we have already remanded quantum matter to Ld. A.O for a fresh adjudication, this penalty matter is too remanded to Ld. A.O for a fresh adjudication on *denovo basis*. This appeal is allowed for statistical purpose.

Order pronounced in open court on 24.06.2025.

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Sd/-

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक/ Dated : 24/06/2025

Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore