

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1202 of 2025

Happy Science Bodhgaya India, Mahamaya Palace Hotel and Conference Center, Bakraur is registered under the Trust having Registered office at Bakrour-824231, Bihar through its General Secretary Sudama Kumar, Gender- Male, Age about-53 years, son of Mangal Chand Prasad, Resident of Mahamaya Palace Hotel, Village- Bakraur, P.S- Bodhgaya and District- Gaya
... .. Petitioner

Versus

- 1. The Principle Chief Commissioner, Income Tax, Central Revenue Building, Virchand Patel Path, Patna.
- 2. The Principal Commissioner/Commissioner-2, Income Tax, Central Revenue Building, Veerchand Patel Path, Patna.
- 3. The Commissioner of Income Tax, National Faceless Appeal Center (NFAC), Income Tax Department, New Delhi.
- 4. The Commissioner of Income Tax, Exemption, Central Revenue Building, Virchand Patel Path, Patna
- 5. The Income Tax Officer, Exemption, Ward-1, Patna.

... .. Respondents

Appearance :

For the Petitioner : Mr. Krishna Mohan Mishra, Advocate
Mr. Ashok Kumar, Advocate
Mr. Prasoon Kumar, Advocate
For the Respondents : Ms. Archana Sinha @ Archana Shahi, Senior SC
Mr. Alok Kumar, Advocate
Ms. Richa Rajeev, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-06-2025

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the Department of Income Tax.

2. The petitioner in the present writ application has prayed for the following reliefs:-

“i. To issue appropriate writs/orders
and/or direction in the nature of writ of



certiorari to quash and set aside the order dated 27.11.2024 (annexure-P/1) whereby and where under the Commissioner of Income Tax, Appeal, NFAC dismissed the appeal in limine on the ground of limitation without considering the limitation petition which filed by the petitioner along with memo of appeal dated 03.06.2019 and the order passed by the Hon'ble Apex Court in SLP No. 11840 of 2019 wherein the Hon'ble Apex Court has condoned the delay in filing appeal.

ii. To hold and declare that the order of dismissal of appeal passed by the Id. Commissioner, Income Tax, NFAC on the ground of limitation is bad and illegal in view of the fact that the Hon'ble Apex Court has passed order in SLP No. 11840 of 2019 dated 10.05.2019 whereby and wherein the Hon'ble Apex Court had extended the period of limitation for four weeks from 10.05.2019 and the said appeal was filed within the period of four week along with limitation petition.

iii. To hold and declare that the order of dismissal of appeal in limine is otherwise bad and illegal in view of the fact that the appellant had filed limitation petition along with memo of appeal, as such, order passed by the Id. CIT, Appeal is illegal and arbitrary and



also against the principle of natural justice.

iv. To issue any other writ/writs, order/orders, direction/directions as your honour deemed fit and proper.”

Brief Facts of the Case

3. The petitioner is a charitable trust and its main aims and objects are to act for charity and religious purposes. It is registered from the office of the District Registration Office at Gaya. The petitioner filed its return of income for the assessment year 2016-17 showing therein ‘NIL taxable income’ as the income of the petitioner was exempted from levy of tax. The return was selected for scrutiny under Section 143(2) of the Income Tax Act (hereinafter referred to as the ‘I.T. Act’). Pursuant to the notice, the petitioner appeared before the Assessing Officer. The Assessing Officer passed an order of assessment against the petitioner and a demand of Rs.45,43,423/- has been raised. Notice of demand under Section 156 of the I.T. Act is Annexure ‘P/4’ to the writ application.

4. Thereafter, the petitioner filed a writ application being CWJC No. 1778 of 2019 before this Court wherein the validity of assessment and creation of demand were questioned. The said writ application was disposed of by an Hon’ble Division Bench of this



Court vide judgment dated 10.04.2019. While disposing of the writ application, this Hon'ble Court noticed that during pendency of the matter, the period of limitation had expired, therefore, the Hon'ble Division Bench held that if the petitioner chooses to file an appeal within four weeks together with a petition for condonation of delay, the Appellate Authority i.e. the Commissioner, Income Tax (Appeal) shall consider and dispose of the same in accordance with law on its own merits bearing in mind the pendency of matter before this Court.

5. The petitioner preferred a Petition for Special Leave to Appeal (C) No. 11840 of 2019 before the Hon'ble Supreme Court but could not succeed. The Hon'ble Supreme Court agreed with the view of the High Court but extended the time which was granted by the High Court for pursuing the alternative remedies by a further period of four weeks. The order dated 10.05.2019 passed in Petition for Special Leave to Appeal (C) No. 11840 of 2019 is available at Annexure 'P/6' to the writ application.

6. It is the case of the petitioner that the petitioner filed appeal against the order of assessment before the Appellate Authority on 03.06.2019 i.e. well within a period of four weeks granted by the Hon'ble Supreme Court. The petitioner also filed a limitation petition and supplied the copy of the judgments of the



Hon'ble Supreme Court and that of the Hon'ble High Court to the Commissioner of Income Tax, Appeal-1. The petitioner has pointed out in paragraph '9' of the writ application that on perusal of Form 35 (Memo of Appeal) filed online on Income Tax portal, it would appear that in Row Nos. 14 and 15 of Form 35, the appellant has briefly stated regarding delay in filing of the appeal and also referred Writ Petition No. 1778 of 2019 filed before the High Court and SLP (C) No. 11840 of 2019 filed before the Hon'ble Supreme Court.

7. It is the case of the petitioner that the appeal filed by the petitioner remained pending since June, 2019 and in the meantime, the I.T. Act was amended and the case of the petitioner was transferred to the National Faceless Appeal Center (NFAC). Pursuant to the notice under Section 250 of the I.T. Act from the NFAC, the petitioner filed a written submission and paperbook along with additional evidence before the Commissioner of Income Tax, Appeal (CIT, Appeal) but the grievance of the petitioner is that the Appellate Authority CIT Appeal, NFAC has dismissed the appeal on the ground of limitation holding that there is a huge delay of 137 days and the appellant has not filed petition for condonation of delay.



Submissions on behalf of the Petitioner

8. Learned counsel for the petitioner submits that it is a case in which the Appellate Authority seems to have acted in a routine and mechanical manner without looking into the records otherwise he would not have held that the appellant has not filed petition for condonation of delay. It is reiterated in paragraph '13' of the writ application that the petitioner had already filed limitation petition along with memo of appeal wherein it was categorically stated that the Hon'ble Apex Court and the Hon'ble High Court has extended the period of limitation in their respective orders, as such, the appeal may be treated within time.

9. It is submitted that it is a gross case of dereliction in duty by the Appellate Authority which has caused immense hardship to the petitioner by compelling him to once again approach this Court by way of a writ petition. This has also burdened the petitioner with the cost of litigation besides wastage of time and energy.

10. Learned counsel submits that the impugned order which is passed by the Appellate Authority is liable to be quashed and the petitioner is entitled for cost of litigation.



Stand of the Respondents

11. A counter affidavit has been filed in which while answering paragraph '13' of the writ application, statements have been made in paragraph '9' of the counter affidavit. There is no denial of the fact that the petitioner had filed an application seeking condonation of delay. The stand of the Respondents is that the Hon'ble High Court had not granted any period of limitation but only stated that since the matter before the Court has taken away the period of limitation, he was allowed four weeks time to file appeal before the Commissioner of Income Tax (Appeal) who will consider and dispose of the same in accordance with law on its own merit.

12. When the matter was taken up for consideration day before yesterday, noticing the kind of pleadings present on the record, this Court called upon learned Senior Standing Counsel for the Department to seek instruction from the competent authority as it appeared to this Court that the CIT (A), NAFC had completely ignored the judgments of the Hon'ble Supreme Court and this Court. This Court was of the prima-facie view that the action of the CIT (A) in passing the impugned order is a disobedience and disregard shown to the order of the Hon'ble Supreme Court as



well as that of this Court, therefore, it may be taken as contemptuous.

13. Today, when the matter has been taken up for consideration, the learned Senior Standing Counsel for the Department has submitted on instruction that it seems to be a case in which the CIT (A) has apparently erred in passing the impugned order without taking into consideration the application seeking condonation of delay and by not looking into the judgment of the Hon'ble Supreme Court and the High Court. It is, however, submitted that the order was passed by NAFC, therefore, it is difficult to find out the officer who seems to have passed the impugned order. In fact, the submission of learned Senior Standing Counsel is that the impugned order may be set aside and the matter be remitted to the Appellate Authority for a fresh consideration within a time frame. It is submitted that the Appellate Authority shall give a physical hearing to the petitioner.

Consideration

14. This Court having noticed the submissions hereinabove, has no hesitation in recording that this seems to be a case of gross negligence if not a case of dereliction in duty. The CIT (A) at NAFC who passed the order has acted without looking into the records. At such a high position where he is required to



consider each and every aspect of the matter in appeal, it is difficult to believe that an officer at his level would act in such a manner that it would result in causing hardship to the assessee and multiply the litigation. This Court is confining its observations with regard to the order impugned in the present writ application only.

15. In the admitted position, this Court sets aside the impugned order as contained in Annexure 'P/1' to the writ application and directs the CIT (A) to consider the appeal afresh keeping in view the judgments of the Hon'ble Supreme Court and that of this Court as discussed above. The CIT (A) has offered to give a personal hearing to the petitioner which must be given and a reasoned order be passed within a period of three months from the date of receipt/production of a copy of this order.

16. We would have left the matter here but the submission of learned counsel for the petitioner that it is a gross case which has resulted in causing hardship to the petitioner and the petitioner has been compelled to incur cost of litigation, cannot be ignored. We fully agree with the contention of the learned counsel for the petitioner that the manner in which the impugned order has been passed has caused hardship to the petitioner and it has also resulted in incurring litigation expenses.



17. In the facts of the present case, we, therefore, direct the Department of Income Tax/Respondents to pay a cost of Rs.10,000/- to the petitioner within a period of four weeks from today. It is open to the Department to realise the cost amount from the erring officer in accordance with law.

18. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

lekhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.06.2025
Transmission Date	

