भारत सरकार / **GOVERNMENT OF INDIA**
वित्त मंत्रालय / **MINISTRY OF FINANCE**
आयकर विभाग / **INCOME TAX DEPARTMENT**
राष्ट्रीय पहचानविहीन अपील केन्द्र / **NATIONAL FACELESS APPEAL CENTRE (NFAC)**
दिल्ली / **DELHI**

To, [redacted] [redacted]Jammu and Kashmir India	

PAN: [redacted]	AY: 2019-20	Dated: 06/11/2025	DIN & Order No : ITBA/NFAC/S/250/2025-26/1082350105(1)

Order u/s 250 of Income Tax Act,1961

*Instituted on **28/05/2024** from the order of **NWR-W-(86)(1)** dated 11/01/2024*

Appeal No	NFAC/2018-19/10378674
Status/Deductor Category	Individual
Residential Status	Resident
Nature of Business	Others
Section under which the order appealed against was passed	147
Date of Order under which the order appealed against was passed	11/01/2024
Income/Loss Assessed (in Rs .)	3222568
Tax/Penalty/Fine/Interest Demanded (in Rs.)	1663260
Present for the appellant	Harpreet Singh , Advocate
Present for the Department	Not Applicable

This is an appeal against order passed u/s 147 r.w.s 144 of the IT Act, dated 11/01/2024. The demand notice is claimed to have been received on 11/01/2024 and the appeal is filed on 28/05/2024. There is a delay of about 03 month 18 days only in filing the appeal. In this regard, the Appellant has stated that;

"1. Delay on account of lack of information about provisions

2. Delay on account of non availibility of viable counsel and the excess

number of proceedings pending"

Condonation of Delay

I have gone through the explanation offered by the Appellant. No mala-fides in filing the appeal belatedly are prima-facie evident either from record or the conduct of the Appellant as evident from record. Hence, I feel it would be in the interest of justice to allow the matter to be contested on merits rather than dismiss it on technicalities for delay. Therefore, as an Appellate Authority, I would rather exercise my discretion to further the cause of justice. Furthering the cause of justice can on no account be held to be arbitrary or perverse.

In the case of **Improvement Trust, Ludhiana vs. Ujagar Singh & Ors. [2010 (6) TMI 660 - Supreme Court;** Other Citation: 2010 (7) SCR 376, 2010 (6) SCC 786, 2010 (6) JT 205, 2010 (6) SCALE 173], it was averred/held, as follows, by the **Hon'ble Supreme Court**:

"……After all, justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold. ……..

Apart from the above, appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation. It is also worth noticing that delay was also not that huge, which could not have been condoned, without putting the respondents to harm or prejudice. It is the duty of the Court to see to it that justice should be done between the parties……

For the aforesaid reasons the impugned orders passed by Appellate Court, and order passed by the High Court, are hereby set aside and quashed.. ……"

In the case of **Collector, Land Acquisition vs. Mst. Katiji and Others** [1987 (2) TMI 61 - Supreme Court; Other Citation: (1987) 167 ITR 471, 62 CTR 23, (1987) 66 STC 228 (SC), 1987 (28) E.L.T. 185 (SC), 1987 SCC (2) 107, JT 1987 (1) 537, 1987 AIR 1353, 1987 (2) SCR 387, 1987 (1) SCALE 413], it was averred/held, as follows, by the **Hon'ble Supreme Court**:

"……It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have

percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. 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.

3. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period"

4. " Every day's delay must be explained " does not mean that pedantic approach should be made. Why not every hour's delay, every second's delay. The doctrine must be applied in a rational, common sense and pragmatic manner.

5. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

6. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.

7. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so……"

In the case of **N Balakrishnan vs. M. Krishnamurthy [1998 (9) TMI 602 - Supreme Court;** Other Citation: 2008 (228) E.L.T. 162 (SC) , 1998 AIR 3222, 1998 (1) Suppl. SCR 403, 1998 (7) SCC 123, 1998 (6) JT 242, 1998 (5) SCALE 105], it was averred/held, as follows, by the **Hon'ble Supreme Court**:

"……9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable

explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. ……The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicue up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. ……..

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation.. ……"

In view of the above, the delay is condoned, and the appeal admitted to be decided on merits.

2. Grounds of appeal:

1. That on facts and circumstances of the case the orders passed by Assessment Unit are bad in both eyes of law and on facts.

2. That, on facts and circumstances of the case the assessing officer has erred while considering the documentary evidences relied upon during proceedings initiated u/s 147, ignoring glaring facts.

3. That, the appellant was not aware of the pendency of the proceedings since all of these notices were served electronically and assessee had no access to the old MAIL AND MOBILE NO. added in previous e filing portal.

3. Statement of Facts:

1. Appellant being a salaried person on the rolls of Indian Army in the rank of havaldar.

2. In the said financial year 2018-19 to which these proceedings relate, he retired and received a commuted value of pension.

3. The amount of commuted value of pension being non taxable is wrongfully added to his income.

4. Submission made by the Appellant

1. That, the appellant, Shri **Kuldeep Singh**, holding Permanent Account Number **(PAN) EFHPS8416C**, herein referred to as "the appellant," is an erstwhile member of the Indian Army. The appellant has rendered commendable and valorous service to the nation, performing his duties with utmost diligence and dedication across various postings and assignments within the Indian Army. The appellant was in active service until his retirement, which was effectuated on the 31st day of August, 2018. The appellant's final posting prior to his retirement was in Srinagar.

2. That, his official rank in the army at the stage of retirement was Havaldar and the salary drawn by him in that capacity falls in the Pay Band 40,400 (Refer to the Last Pay drawn certificate annexed herewith : **Annexure A**).

3. That, prior to his retirement he was a full-time member of armed forces and was not employed elsewhere.

4. That, subsequent to his retirement, he received a commuted value of pension to the tune of **₹ 24,86,946.00** /- (*Rupees Twenty four lacs eighty six thousand nine hundred and forty six only)* in addition to the salary he already received up to the date of retirement.

5. That, the sum total of salary received from his employer is : ₹3,43,684 (Total Income after deduction u/s 80C (-)875000 = **₹ 2,56,180**) and TDS deduction as per FORM 26 AS and FORM 16 amounts to : ₹9,000/-

6. The appellant's place of posting has been subject to frequent changes due to the nature of his employment, during which the appellant has diligently served the country and fulfilled every call of duty. Owing to the appellant's employment circumstances, which preclude continuous access to digital means of communication (such as SMS, electronic mails, etc.), the appellant engaged a local consultant during one of the prior assessment years to assist in the filing of returns. Subsequently, the portal was relocated to a different web address, which resulted in the communication vacuum.

7. Following his retirement, the appellant relocated to a different place. To the best of his knowledge and belief, the appellant asserts that he never harboured any ill intent to evade tax assessment. The appellant contends that any failure to file income tax returns was solely due to being ill-informed of the repercussions associated with such non-filing. In addition to that, **the appellant had no tax liability arising out of the salary income received by him (Refer to Annexure B)**

8. That, the notices served to appellant were served electronically and since he had already lost access to the already linked Mobile Numbers and E-Mail address, he was uninformed and unaware that, the proceedings have commenced against him. It is categorically denied in the Replies filed to the notices of E-proceedings dashboard.

9. It is needful to bring to your kind attention that the proceedings of assessment and scrutiny were carried out in vacuum in 2023, for the assessment year 2019-20 relating to the financial year, 2018-19. The appellant on the other hand was never

informed through any other channels available. Refer to the Notice vide DIN : **ITBA/AST/F/144(SCN)/2023-24/1058103451(1) Page 7/10** wherein it has been

clearly mentioned that :-

> *further, information had been sought u/s 133(6) of the IT Act 1961 on 13.10.2023 regarding details of said receipts from M/s PAO ORS JAKLI and State Bank of India, however, no response have been received from these concerns also.*

(Refer to Annexure C)

It is submitted both of these institutions never informed the appellant ; nor took any significant step to provide information to the Assessing Officer, which if they would have done, the assessment would have reflected that appellant's present assertions and would have answered the AO's query without leaving a room for mistrust and unfounded presumption.

10. That, for the brevity of the argument the legal position on the taxability of Commuted value of pension has been reiterated herein : -

Section 10 (10A) of Income Tax Act, 1961

10 (10A)

(i) any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the civil services of the Union or holders of posts connected with defence or of civil posts under the Union (such members or holders being persons not governed by the said Rules) or to the members of the all-India services or to the members of the defence services or to the members of the civil services of a State or holders of civil posts under a State or to the employees of a local authority or a corporation established by a Central, State or Provincial Act ;

(ii) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

> *(a)in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and*
>
> *(b) in any other case, the commuted value of one-half of such pension, such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality*

(iii) any payment in commutation of pension received from a fund under clause (23AAB) ;

11. That, the aforementioned notices have been sent under the presumption that this figure of amount which is actually a commuted value of pension is part of appellant's salary and as such this presumption is wrong and inaccurately arrived at.

The Hon'ble Karnataka High Court in ***Devendra Pai v. ACIT***. WP. No : **52305/2018 (T-IT)** upheld the **Circular No : 014 (XL-35) dated 11.04.1995** which provides as follows

> *"The intention of this circular is not that tax due should not be charged or that any favour should be shown to anybody in the matter of assessment, or where investigations are called for, they should not be made. Whatever the legitimate tax it must be assessed and must be collected. The purpose of this circular is merely to emphasize that we should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him"* emphasis supplied.

12. That, the appellant further contends that this matter came to his attention only on 29th April, 2024 when he was served with a physical copy of the notice and thereafter, he has been constantly on knees for reaching out to professionals for assistance, as he himself doesn't have the requisite knowledge of the subject matter of these accusations levelled against him through notices.

- If the notices be clearly read, the learned officer has solely relied on the calculations provided to them by *RMS- Risk Management Strategy.*
- **It is pertinent here to draw your attention towards Annexure C,** where it is apparent that additions to income have been made in a mechanical manner with non-application of reasoning and analysis of statements of TDS and annexures thereto

Refer to Page 2 & 3 of the notice, it is clear that the entry pertaining to the commuted value of pension in itself has been done erroneously , and the same amount have been reflected twice

13. That, the appellant had no intention to wilfully evade the tax assessment, or to avoid paying tax since his total salary didn't attract the levy of tax in the first place *referring to the Form 16 provided by employer,*

It has been already settled **in Improvement Trust vs. Ujagar Singh (Supreme Court) Civil Appeal Nos. 2395 of 2008 dated 26.06.2010** that :

> *"Unless malafide(s) are writ large on the conduct of the party, generally as a normal 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"*

Also, it has been held by Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag v. Katiji, (1987) 2 SCC 107** that the litigant has nothing to gain from resorting to delay in a case where he has nothing to gain from not responding or doing non compliance

> *"When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, the other side cannot claim to have vested right in injustice being done because non-deliberate delay. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on a malafide. The litigation does not stand to benefit by resorting to delay, in fact he is on serious risk."*

14. That, in view of full disclosure the present appeal is being filed in respect of claims made herein along with documentary proof, the primary document being the following :

    1. Form 16 issued by former employer
    2. Bank Account statement provided by SBI

15. The assessee seeks to bring to your attention that, per the notices sent the demand has been assessed initially for a taxable income of **₹ 57,49,514** vide notice number : **ITBA/AST/F/148A/2022-23/1051640102(1)**

Later upon assessment this figure was reduced to : **₹ 32,22,568** as per the order vide DIN : **ITBA/AST/S/319/2023-24/1059601306(1)** passed on 11/01/2024 u/s 147 r/w 144

It would be pertinent to mention that the income from salary have been miscalculated and full of glaring omissions on part of the A.O./Assessment Unit.

It is also stated that, the assessment has been carried out solely on the basis of amount disbursed without considering the fact that, **if salary has been paid by State Bank of India, then they were liable to deduct TDS, which is not in the present case, since it was not a taxable income in the first place.**

In conclusion, this appeal is being preferred by assessee who is not at any fault here which was done with ill intention or to evade taxes. It was an honest mistake on his part and since the demand amount is :

---------- **₹16,63,260 /-** ----------

(***Rupees Sixteen lacs sixty three thousand two hundred and sixty) as on this date*** *which is equivalent to ½ of the retirement benefits and the non-taxable income* which in itself is violative of principals of natural justice, specially when the Individual has worked as a respected member of armed forces.

PRAYER OF RELIEF

In light of the arguments presented in support of circumstances and the judgements cited the assessee prays for the the following relief(s)

a) To condone the delay in filing this appeal ;

b) To condone the delay in filing the replies to the aforementioned notices;

c) To quash the penalty proceedings and the demand in itself on the grounds that same pertains to an assessment carried out with insufficient facts;

d) To grant a stay of demand raised against appellant ;

e) To pass directions for A.O/ Assessment Unit to quash the demand vide Demand Reference No:20232019370040484 70T Assessment Year :2019;

f) To pass directions to Assessing officer to quash the proceedings in its entirety and for rectification of the order(s) passed.

5. Decisions on Grounds of Appeal

5.1 I have gone through the facts of the case and have considered the submissions filed by the appellant as well as material on record.

5.2 The appellant has not filed its return of income u/s 139 for the year under consideration. Notice u/s 148 was issued to the appellant asking him to furnish return of income as during the Financial Year 2018-19 relevant to A.Y 2019-20. It was noted by the AO that the appellant had substantial financial transactions of Rs. 57,49,514/- only, but failed to file its return of income for the year.

5.3 The assessment was completed *ex-parte,* u/s 147 r.w.s 144 of the Act on account of non-compliance by the appellant to various notices issued by the Assessing Officer during the assessment proceeding. In the impugned assessment order, the Assessing Officer made solitary addition of Rs.32,62,568/- only under the head of income salary to arrive at the total income for the relevant year.

5.4 In the appellate proceedings, the appellant made elaborate written submission which has been reproduced here in before. The said submission is not quoted once again to avoid repetition.

5.5 The appellant furnished copy of bank statement, copy of Form no. 26AS for

the relevant year, ex-serviceman certificate (Havildar), Last Pay Drawn Certificate of Pay & Accounts Office, J&K, for 08/2018, gratuity revision certificate, medical test reports, etc. It is, thus, more than apparent that there are wide variations between the facts available on record before the Assessing Officer at the time of passing the impugned assessment order and the facts as claimed by the appellant during the appellate proceedings. Owing to non-compliances to various notices issued by the Assessing Officer, the relevant facts of the case have not been properly brought on record. In the result, many relevant issues which can have a bearing on assessment of the appellant's total income for the year under consideration were not placed before the Assessment Officer during the assessment proceedings thereby leading to passing of the impugned ***ex parte*** assessment order.

5.6 Considering all relevant facts and circumstances of the case, it would serve the ends of justice if the issues agitated in the impugned assessment order and in this instant appeal as well as any other relevant issue(s) are re-examined by the Assessing Officer afresh after hearing the appellant.

5.7 Accordingly, the impugned assessment order is **set aside** and the case is remitted back to the file of the Assessing Officer with a direction to re-examine the relevant issues and frame a ***de novo*** assessment order in accordance with law after affording adequate opportunities of being heard to the appellant.

5.8 In particular, the Assessing Officer would examine the contentions raised by the appellant. The Assessing Officer would also ensure that notices of hearing sent to the appellant during the set aside proceedings are duly served in accordance with the principles of natural justice. The appellant would extend all co-operation and intimate the Assessing Officer of any change in his communication details including addresses and emails which can have a bearing on the service of notices and compliances thereto.

5.9 Facts pertaining to the appellant's state of affairs are primarily within the knowledge of the appellant. It is, therefore, incumbent upon the appellant that all relevant facts and material in his knowledge and possession are placed before the Assessing Officer so that the Assessing Officer can arrive at an informed and accurate assessment of the appellant's true income for the year under consideration. Accordingly, the appellant is advised to effectively utilize the fresh opportunities

afforded to present his case before the Assessing Officer.

5.10 The grounds of appeal agitated by the appellant are decided as above. For statistical purposes, these grounds are treated as **partly allowed**.

6. In the result, the appeal is decided as above. This order has been passed under Section 250 read with Section 251 of the Act.

Commissioner of Income-tax (Appeals)
Income Tax Department