

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Raj Kumar Chauhan, Judicial Member
&
Sh. Brajesh Kumar Singh, Accountant Member**

ITA No. 7471/Del/2025 :Asstt. Year: 2015-16

Gurcharan Singh Bhatia, C-9, Westend Colony, New Delhi-110027	Vs	ACIT, Circle-46(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AHNPB4697E		

**Assessee by: Sh. K. Sampath, Adv.
Revenue by : Sh. Ravi Kant Choudhary, Sr. DR**

Date of Hearing: 19.03.2026	Date of Pronouncement: 16.06.2026
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ORDER

Per Raj Kumar Chauhan, Judicial Member:

The appeal of the assessee is directed against the order dated 30.10.2025 of Id. CIT(A)/Addl./JCIT(A)-4, Chennai passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "*the Act*") wherein dismissal order of rectification application u/s 154 seeking refund of the TDS amount was confirmed and the claim of refund of Rs.17,08,200/- on account of TDS deducted as income from house property was denied on the ground that assessee could not e-verified the Income Tax Return within stipulated period.

2. The facts in brief as culled out from para 2.1 to 2.3 of the impugned order are as under:

"2.1 The assessee is an Individual. He continued to derive income from house property, business income from finance and interest on deposit. Return of income for assessment year 2015-16 under section 139(1) of IT Act 1961 was filed on 03/09/2015 vide Ack. no. 771174300030915 declaring Nil income. Refund of Rs. 17,08,200 was claimed on account of advance tax paid and TDS deducted out of rental income. The income declared in the return of income is as under:

Statement of total income	
Income from House Property	Rs. 1,42,94,172
Less : Loss	
i) business loss of the year	Rs. 1,22,99,484
ii) Unabsorbed depreciation of the year	Rs. 59,136
	Rs.1,23,58,620 (-) <u>Rs.1,23,58,620</u>
Gross Income	+ Rs. 19,35,552
Less :	
Brought forward loss of AY 2009-10	-Rs. 19,35,552
Net Taxable Income	<u>NIL</u>
Income tax due	Nil
Less : Advance tax	Rs. 1,000
TDS	<u>Rs. 17,07,202</u>
Refund due	<u>Rs. 17,08,202</u>

2.2 The assessee could not e-verify the Acknowledgement receipt of return of income e-filed on 03.09.2015 within stipulated period of one month on account of being busy in looking after his father Late Shri Santokh Singh, aged 83 years, who was seriously ill and was: going to hospital time and again. Under these circumstances the assessee could not e-verify the acknowledgement receipt dated 03.09.2015 of return of income e-filed within stipulated period. Thereafter, the assessee had e-filed condonation request to CPC on 16.02.2018. It has accepted by the CPC by issuing E-verified Acknowledgement receipt of return of income filed on 03.09.2015 by Electronic verification code OZM734WZI generated through Aadhar OTP mode. The return of income filed under section 139(1) on 03.09.2015 has been treated being e-verified and is, therefore, a valid return of income. The return of income has not been processed under section 143(1) of IT Act. It has been left as it is. No refund due of Rs.17,08,202 was issued.

2.2 The assessee had filed applications so many times for issue of refund of Rs 17,08,202. No action on the same was taken. Thereafter the assessee had filed Grievance application on 12/02/2024 vide Ack. No. 16158243. The assessee had also filed an application under section 154 at ASK Counter on 20/02/2024 vide Ack. No. 41451235052 for issue of refund of Rs. 17,08,202. The ACIT, vide disposal of Grievance application and rectification application under section 154 on 30/04/2024, has rejected the request of issue of refund on the point the assessee did not e verify the acknowledgement receipt of return e-

filed on 03/09/2015 within stipulated period of one month with CPC. The assessee had e-verified the acknowledgement receipt by apply for condonation request to CPC who had accepted the same and e-verified acknowledgement receipt on 16/02/2018 of e-filed of return on 03/09/2015.

2.3 The ACIT, Circle 46(1), New Delhi on 30/04/2024 has rejected the application u/s 154 for issue of refund. The said e verification of acknowledgement receipt of e-filed return dated 03/09/2015 on 16/02/2018 by CPC is on record with the ACIT at the time of rejection of refund application under section 154 of IT Act."

3. Aggrieved by the refusal to refund of TDS amount and rejection of application u/s 154 of the Act vide order dated 30.04.2024, the assessee filed appeal before JCIT(A), Chennai who while rejecting the appeal has passed the following order contained in para 4 & 5 extracted below as under:

"4. Decision:

4.1 Ground 1 to 5:

The assessee had filed his ITR for AY 2015-16 on 03.09.2015 and had claimed a refund of Rs. 17,08,200/-. Though he had filed his ITR within due date, the assessee had not e-verified it within the due date but got it verified only on 16/02/2018 which is much beyond the due date of verification.

A refund under the Income Tax Act, 1961 cannot be issued to an assessee who has not verified his Income Tax Return (ITR) within the prescribed time. Return verification is a statutory requirement, and failure to verify before the due date means that the ITR is invalid/unfiled, thus resulting in no legal assessment and therefore, it is ineligible for refund.

As per, Section 143(1), Refunds can only be initiated after processing a valid, verified ITR. If the ITR is unverified, CPC cannot process the return or compute any refundable claim.

The only option for the assessee is to Apply for condonation of delay in verification to the CPC or to the

JAO under Section 119(2)(b) and if the approval of condonation is received, then the refund maybe released.

JCIT(Appeals) does not have the authority to grant condonation of delay.

Hence, the grounds of the assessee are dismissed.

4.2 Ground 6:

The ground is general in nature.

5. Conclusion: In the end, the appeal is dismissed."

4. Aggrieved by the impugned order, the assessee is in appeal before the Tribunal and has raised the following grounds of appeal:

"On the facts and in the circumstances of the case and in law, the Id. NFAC/CIT(A) erred in upholding the action of the Assessing Officer in rejecting the assessee's claim for refund.

The above action being arbitrary, fallacious, unwarranted and opposed to principles of natural justice must be quashed with directions for appropriate relief."

5. We have heard Id. AR and the Id. DR. Ld. AR at the very outset submitted that Id. JCIT(A) has passed the impugned order contrary to the law settled by various High Courts including the Hon'ble High Court of Karnataka in K. Nagesh Vs. ACIT (2015) 376 ITR 473 and also the judgment of Gujarat High Court in S. R. Koshti Vs. CIT (2005) 276 ITR 165. It is an admitted fact that the appellant has suffered deduction of tax at source of the house property income which is reflected in Form 26AS. It is further submitted that the assessee has filed the return on time but its e-verification was done belatedly.

The delay in e-verification was due to reasonable and sufficient cause as his father was seriously ill and the assessee cannot be penalized for these technical lapse despite that Government/Revenue was obliged to render technical assistance to the assessee. It is further submitted that there is no provision in the Act which would permit the AO/CPC to deny the refund and the credit given for the TDS amount deducted as per mandate of section 199 of the Act. Lastly, it is submitted that the condonation application for late e-filing was moved before the CPC who has allowed the same and despite allowing condonation of delay by the CPC and acceptance of filing of the return u/s 139 of the Act, the said return was not processed u/s 143(1) and credit of TDS amount deducted at source was not given to the assessee wrongly. It is further argued that Id. JCIT(A) while confirming the order of the Assessing Officer has perpetuated the illegality done by the Revenue authority which has resulted into miscarriage of justice. It is therefore submitted that in the given fact and circumstances, the ground raised need to be allowed and appeal be allowed and the lawful tax paid by the assessee by way of TDS deduction need to be refunded because the Revenue cannot be permitted to unjust enrichment on technical grounds.

6. The Id. DR of the other hand supported the order of the Id. lower authorities and prayed for dismissal of the appeal.

7. We have considered the rival submissions and examined the material available on record. The only question to be decided by us is whether in the given facts and circumstances, the Revenue can be permitted to denial the refund of TDS amount lawfully deducted and admitted to have been deducted merely on the technical ground that the return filed was not e-verified and the same has been belatedly e-verified and the delay was duly condoned by the CPC. The Id. AR of the assessee has relied the case of Hon'ble Karnataka High Court in K. Nagesh (supra) wherein in para 26 & 27 it was held as under:

"26. But we are unable to agree with the learned counsel appearing for the Revenue. The declaration of income furnished by the assessee under the revised return is declared to be invalid. In such circumstances, the provisions of self-assessment under section 140A of the Act are not attracted. If the Assessing Officer is barred from framing a fresh assessment based on any invalid return, non-est in the eye of law though is chargeable under section 4 of the Act, the Department, retaining that amount of tax paid on the basis of an invalid return without there being any self-assessment/assessment made by the authorities under the Act would violate article 265 of the Constitution of India.

27. In view of the same, we are of the opinion that when the assessment is annulled by the authorities, the Department is bound to refund the excess amount of tax paid by the assessee on the valid return. The interpretation of the Tribunal that the return contemplated under proviso (b) to section 240 of the Act, includes both valid and invalid is not sustainable and has to be set aside."

8. Similarly, Id. the AR has also relied the case of Hon'ble High Court of Gujarat in S. R. Koshti (supra) wherein in para 22, the Hon'ble High Court was pleased to hold as under:

"22. A word of caution. The authorities under the Act are under an obligation to Act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over-assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected. This court, in an unreported decision in the case of Vinay Chandulal Satia v. N.O. Parekh, CIT, Special Civil Application No. 622 of 1981, rendered on August 20, 1981, has laid down the approach that the authorities must adopt in such matters in the following terms:

"The Supreme Court has observed in numerous decisions, including Ramlal v. Rewa Coalfields Ltd., AIR 1962 SC 361; State of West Bengal v. Administrator, Howrah Municipality, AIR 1972 SC 749, and Babhutmal Raichand Oswal v. Laxmibal R. Tarte, AIR 1975 SC 1297, that the State authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The State authorities cannot adopt the attitude which private litigants might adopt."

9. Thus, from the legal precedents relied by the Id. AR, we have noticed that Hon'ble Gujarat High Court has observed that "tax can be collected only as provided under the Act and if an assessee, under a mistake, mis-conception is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate tax due are collected".

10. Similarly, the Hon'ble Karnataka High Court in case Gujarat in S. R. Koshti (supra) was pleased to hold that "when if the Assessing Officer is barred from framing a fresh

assessment, based on an invalid return, the department, retaining the amount of tax paid on the basis of invalid return without there being any self-assessment/assessment made by the authority under the Act, would violate Article 265 of the Constitution of India”.

11. We have considered the facts and circumstances and the legal precedents relied, as discussed above. It is an admitted fact that the TDS amount of Rs. 17,08,200/- was deducted at source. As per Article 265 of the Constitution of India no tax shall be levied or corrected except with authority of law. In view of the constitutional mandate as discussed above, as enshrined in Article 265, in case the refund is denied to the assessee on technical grounds, it shall tantamount to unjust enrichment on behalf of Revenue and shall violate the constitutional mandate of Article 265 Constitution of India. It is to be noticed that there was a sufficient cause shown for delayed e-verification of the return and the said delay was duly condoned by the CPC. In these given facts and circumstances, the refusal to refund the TDS amount of Rs. 17,08,200/- by the Assessing Officer and the dismissal of the appeal by the JCIT(A) has resulted into miscarriages of justice and the impugned order is accordingly set aside. The ground raised in the appeal is accordingly allowed.

12. The Assessing Officer/CPC is directed to take necessary steps for refund to assessee as per law.

13. In the result, the appeal of the assessee is allowed in the above terms.

Order Pronounced in the Open Court on 16/06/2026.

Sd/-

(Brajesh Kumar Singh)
Accountant Member

Dated: 16/06/2026

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Raj Kumar Chauhan)
Judicial Member

ASSISTANT REGISTRAR