

6. The principles which are germane while considering a prayer for condonation of delay are now well settled. The extent of the delay is not strictly material. What has to be seen is whether the appellant has made out "sufficient cause" for not filing the appeal within time. While considering the prayer a pragmatic view of the matter has to be taken depending upon the facts and circumstances of each case.

7. The Supreme Court in the case of Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649 after taking note of several decisions holding the field, has culled out the principles which are relevant in the matter of condonation of delay. It has been inter alia held that there is no presumption that the delay is intentional, as no party stands to gain by approaching the court late. It has also been held that a liberal view can be taken in respect of delay of short duration. It is necessary to note that normally a Court or the Tribunal would prefer decisions on merit than on technicalities. Considering the fact as obtaining in this case, in the context of the principles as laid down, we find that the delay ought to have been condoned. The appellant is a senior citizen and claims to be visiting his son in USA when the order came to be passed. The CIT(A) has observed in para 2.8 that the orders were duly served on the assessee 'probably physically' as well as electronically on email. Atleast there is nothing on record to show that the order was served physically. Considering the overall circumstances, we find that this is a fit case where the delay deserves to be condoned.

8. We have gone through the grounds raised by the appellant in this appeal which, inter alia, also touches upon the merits of the order passed by the Assessing Officer. It is necessary to note that the CIT(A) had no occasion to consider the

merits as the appeal was dismissed on the technical ground on refusal to condone the delay. It would be appropriate if the CIT(A) considers the grounds on its own merits and in accordance with law.

9. In the result, the appeal is allowed. The appeal filed by the appellant is restored back to the file of the CIT(A) for disposal on merits in accordance with law. Needless to mention, that it will be open to the appellant to produce such documents as may be thought fit or called for by the authorities. The appellant shall co-operate for expeditious disposal of the matter.

10. The appeal is allowed in the aforesaid terms.

Order pronounced in the open court on 9<sup>th</sup> December, 2024.

Sd/-  
[B R Baskaran]  
ACCOUNTANT MEMBER  
Mumbai, Dated : 9<sup>th</sup> December, 2024  
SA

Sd/-  
[Justice (Retd.) C V Bhadang]  
PRESIDENT

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai