

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON'BLE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 5975/Mum/2024
(Assessment Year: 2009-10)**

Balaji Universal Tradelink Pvt Ltd 3 rd Floor, Ashok House, Opp Khara Kuwa, 118/120, Shaikh Menon St, Zaveri Bazar, Mumbai – 400 002.	Vs.	The DCIT, CC-7(1) Room No. 653, 6 th Floor Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400020.
PAN/GIR No. AABCL0236H		
(Applicant)		(Respondent)

**ITA No. 5976/Mum/2024
(Assessment Year: 2009-10)**

Balaji Bullions & Commodities (I) Pvt Ltd 3 rd Floor, Ashok House, Opp Khara Kuwa, 118/120, Shaikh Menon St, Zaveri Bazar, Mumbai – 400 002.	Vs.	The DCIT, CC-7(1) Room No. 653, 6 th Floor Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400020.
PAN/GIR No. AADCB0236F		
(Applicant)		(Respondent)

Assessee by	Shri Sharwan Kr. Jha, Adv
Revenue by	Shri Kailash C. Kanojiya, CIT DR

Date of Hearing	31.12.2024
Date of Pronouncement	18.03.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeals have been filed by the different assessees challenging the impugned order 19.12.2019 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the Commissioner of Income Tax (Appeal)-49, Mumbai for the assessment year 2009-10.

2. Since all the issues involved in these appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take ITA No. 5975/Mum/2024, A.Y 2009-10 as lead case and facts narrated therein, the assessee has raised the following grounds of appeal:

1. That the quantum Appeal filed by the Assessen was decided by the Hon'ble ITAT. Mumbai Bench in favour of the Assessee vide order dated 29.04.2022 in ITA No. 1292/MUM/2018 for the AY 2009-10. Since, the quantum appeal is allowed in favour of appellant (Assessee), the action under section 271(1)(c) of the Act is infructuous. And hence, the impugned Order dated 16.12.2019 passed by Ld. CIT(A) is liable to be quashed. It is settled position of law that when the quantum addition is deleted by the appellate authorities, the penalty levied under Section 271(1)(c) of the Income Tax Act. 1961 for the said quantum addition cannot be survived.

2. That the penalty order is barred by limitation of time. The penalty order was passed after expiry of limitation period, under this circumstances, legality of penalty order having no

legal foot to stand against the assessee. Therefore, impugned penalty order is liable to be quashed.

That the impugned order was passed on 16.12.2019 without signature. Body of the appeal order passed u/s, 250 of the IT Act in absence of signature, legality of the said order not to be carried for further adverse action as per the settled law. on basis, the said impugned order to be deleted non-est.

3. The impugned order dated 16.12.2019 without signature body of the order, uploaded on the Income Tax portal with intimation letter dated 19.12.2019 i.e. after expiry of 2 days vide documents No. ITBA/APL/S/91/2019-20/1022663279(1) dated 19.12.2019 wherein it is clearly mentioned that "This is a system generated document and does not require any signature". Therefore, the assessee's contest the impugned order in absence of signature having no legality and liable to be declared void ab initio.

4. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

5. That the appellant craves leave to add, to alter, amend, modify and/or delete any or all of the above said ground(s) of appeal.

3. At the outset, we noticed that there is a delay in filing the present appeal and in this regard an application for seeking condonation delay has been filed by the assessee, the contents of which are reproduced below:

1- That the Ld. CIT(A)-49, Mumbai has decided the first penalty appeal of the assessee and passed the order on 16.12.2019 u/s. 251 of the Income Tax Act, 1961 and same was uploaded on Income Tax Portal on 19.12.2019 without

signature along with an intimation letter dated 19.12.2019 bearing document No. ITBA/APL/S/91/2019-20/1022663279(1).

2- That since the then AR dropped himself out from the appeal proceeding, the assessee was looking for new AR but meanwhile active director's health deteriorated since he is an IHD (Ischemic Heart Disease) patient. In between, CITA(A) Order passed in the first appeal of the assessee. Since health of the Director was not permitting him to work and travel in circumstances beyond his control, he could not engage new AR instantly that time. Unfortunately, the Covid pandemic has spread its legs in the country, due to which nationwide lockdown declared by the government in March, 2020.

3- That the health of the director was continuously deteriorating, so, in July, 2020, the Director of the company undergone CABG x 5 GRAFTS OF PUMPS on 06.07.2020 (Bypass Surgery) even in corona period but no improvement in health. Hence, again in January, 2021 the director undergone PTCA (Angioplasty) and advised for maximum rest under medical supervision. Due to the said medical problems, he failed to make compliance and to take further steps in many different issues of the company in time manner.

4- That due to health issue and ongoing effect of covid-19 pandemic, office operation and activities was affected for long time. After that the assessee engaged new AR to take care of the Income tax matters of the Company and the assessee tried to get status of the income tax matters from previous AR but could not establish contact with him and hence new AR itself started to get details and documents of all the matters and it was realised that appeal was not preferred in the present case. This work took long time and hence delay caused in filing appeal before this Hon'ble Tribunal.

5- That the delay caused was not intentional or wilful but was due to the reason mentioned above.

6- That it is pertinent to note that the quantum appeal bearing ITA No. 1292/MUM/2018 was already decided on 29.04.2022

in favour of the assessee. On the basis, raised demand amount of Rs. 51,07,33,835/- being 100% of the tax sought u/s. 271(1) (C), is liable to be deleted.

7- However, the appeal is being filed before this Hon'ble Tribunal but there is delay in filing of appeal by about 1020 days, which may be condoned to avoid the irreparable harm, loss and injustice to the assessee/appellant.

8- It is, therefore, the Assessee/appellant Company prays that delay in filing of this appeal against the impugned CIT(A) order dated 16.12.2019 may kindly be condoned on merit since the quantum appeal bearing ITA No. 1292/MUM/2018 allowed in faour of the assessee. On basis, suo moto as per settled principal of the law, the said penalty order u/s. 271(1)(c) may be treated infructuous in interest of justice and delay may be condoned as prayed by the appellant, for which act of kindness we shall be ever grateful.

4. On the other hand, Ld. Ld.DR contesting the said application and argued that the assessee has no “*sufficient cause*” for seeking condonation of delay and therefore same deserves to be dismissed.

5. We have heard the counsels for both the parties on this application for seeking condonation of delay and perused the material placed on record and judgments cited before us. From the records we noticed that although there is delay of 1020 days in filing present appeal for which detailed reasons have been explained in the accompanying application supported by detailed affidavit.

However, the fact remains that the present appeal is against upholding the penalty levied u/s 271(1)(c) of the Act regarding which the quantum appeal bearing ITA No. 1292/Mum/2018 has already been decided by the Coordinate Bench of ITAT in favour of assessee and demand raised has already been deleted. Therefore in this way since the quantum appeal have been decided in favoure of the assessee, therefore the penalty order passed u/s 271(1)(c) of the Act has become infructuous. Therefore without going into the merits of the reasons mentioned in the application for seeking condonation of delay. We take into consideration the fact that the assessee has a good case for seeking consonation of delay as the quantum appeal has already been decided in favoure of assessee and consequently the penalty proceedings have become infructuous. Therefore, considering the factual position and also keeping in view the principles laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)*** wherein it has been held that where substantial justice is pitted against technicalities of none deliberate delay, then in that eventuality substantial justice is to be preferred, therefore we condone the delay in filing the appeal and the present appeal is admitted to be heard on merits.

6. From the records, we also noticed that after passing of the impugned order on 16.12.2022 by Ld. CIT(A), subsequent development took place as the quantum appeal filed by the assessee was decided by the Coordinate Bench of ITAT in favour of the assessee vide order dated 29.04.2022 in ITA No. 1292/Mum/2018 and the assessment order passed in the above case was held as invalid.

7. Since the assessment order has been held as invalid therefore in our view the penalty arising out of the said assessment order also needs to be deleted because when once assessment order which is the “**basis**” for initiating proceedings for penalty is “**no more in existence**” then in that eventuality no penalty is leviable. Therefore keeping in view our above discussion we quashed the penalty imposed by the AO and upheld by the CIT(A) u/s 271(1)(c) of the Act in the present case. Consequently the grounds raised by the assessee stands allowed.

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8. As the facts and circumstances in these appeals are identical to ITA No 5975/Mum/2024 for the A.Y 2009-10

(except variance in figures) and the decision rendered in above paragraph would apply **mutatis mutandis** for this appeal also. Accordingly, the grounds of appeal of the present appeal also stands allowed.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 18.03.2025.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, dated 18/03/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai