

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH
PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI G D PADMAHSHALI ACCOUNTANT MEMBER

I T A. Nos.10/PAN/2025
(A.Y. 2018-19)

Dinkar Kashimath Patil, H.No.322/3,Ganpatiwada, Near Graceland,Khandola, Marcela, Ponda-403107, Goa.	Vs .	National Faceless Assessment Centre, Delhi. .
PAN/GIR No. AJJPP9976E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Rahul Agarwal.AR
Revenue by	Smt.Rijula Uniyal.Sr.DR

सुनवाई की तारीख/Date of Hearing	03.04.2025
घोषणा की तारीख/Date of Pronouncement	04.04.2025

ORDER

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 144 r.w.s147 and u/sec 250 of the Act. The assessee has raised the grounds of appeal challenging the order of the CIT(A) sustaining the addition of short term capital gains and not condoning the delay in filing the appeal before the CIT(A).

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before

the Hon'ble Tribunal and the assessee has filed the affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and sufficient cause was explained and the Ld. DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

3. The brief facts of the case are that, the assessee has not filed the return of income. The Assessing Officer (AO) based on the information from ITBA data found that the assessee has sold the immovable property of Rs.60,00,000/- in the F.Y.2017-18 and TDS was deducted under section 194IA of the Act. The Assessing Officer has reason to believe that the income has escaped assessment and issued notice u/sec148 of the Act. And further notice u/sec142(1) of the Act was issued to furnish the details. Since, no explanations/details were filed, the AO considering the information available on record has invoked the provisions of Sec. 144 of the Act and finally assessed the entire sale consideration as short term capital gains and assessed the total income of Rs,60,00,000/- and passed the order u/sec 144 r.w.s 147 of the Act dated 06.03.2023.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has issued notice and there was compliance by the assessee and there was delay of 143 days in filling the appeal and the assessee has filed the sufficient reasons for the delay dealt at Page 9 of the order. Whereas the CIT(A) has not condoned the

delay and dismissed the assessee appeal in limine. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. We heard the rival submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in spite of providing adequate opportunity of hearing and the delay in filing the appeal was not explained with the reasonable cause. Whereas the assessee has raised grounds of appeal challenging the addition by the A.O and there could be various reasons for no proper compliance. Whereas the application U/sec 249(3) of the Act for condonation of delay in filing the appeal was filed before the CIT(A) dealt at Page 9 of the order and also affidavit was filed before the Honble Tribunal. We Considering the facts, provisions and the contents of the application dealt by the CIT(A) and the affidavit filed by the Ld.AR. We found that there is a reasonable cause explained and there is no benefit is derived in causing delay in filing appeal before the CIT(A). Whereas the Hon'ble Supreme Court in case of B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693, has held that the following principles must be kept in mind while considering the application for condonation of delay;

(i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.

(xi) It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

6. The Hon'ble supreme court in the case of Collector, Land Acquisition Vs. MST Katiji & others (167 ITR 471) (SC) has observed as under :

“ The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

7. We respectfully follow the observations and ratio of the decisions of Hon'ble Supreme Court and find that the delay in filing the appeal before the CIT (Appeals) by the assessee is supported with sufficient cause and pragmatic approach should be considered for condonation of delay and accordingly the delay

is condoned. Further we considering the principles of natural justice, shall provide with one more opportunity of hearing to the assessee to substantiate the case along with the evidences. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits subject to payment of cost of Rs.5,000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal and We allow the grounds of appeal of the assessee for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.04.2025.

Sd/-

(GD PADMAHSHALI)
ACCOUNTANT MEMBER

Panaji Dated: 04/04/2025

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT
6. Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)ITAT,
Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			