

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3590/MUM/2024 (A.Y: 2017-18)**

Abdul Sattar Nagori

Shop No. 123, Citi Centre S. V. Road,
Goregaon West, Mumbai-400 062

PAN: AINPB2060N

ITO 31(1)(1),

Kautilya Bhavan Bandra Kurla
Complex Bandra East,
Mumbai-400 051

(Appellant)

(Respondent)

Assessee Represented by

**: Shri Bhupendra Shah , Ld.
AR**

Department Represented by

**: Shri Kiran Unavekar, Ld.
DR**

Date of conclusion of Hearing

: 10.01.2025

Date of Pronouncement

: 04.04.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 26.09.2023 of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], wherein the Ld. CIT(A) has confirmed the order passed



by AO u/s 144 r.w.s. 143(3) of the Act and dismissed the appeal of the assessee.

2. Aggrieved by the order of Ld. CIT(A), assessee preferred the present appeal before us and has raised the following grounds of appeal:-

1. On the facts and in the circumstances of the appellant's case and in law, the learned CIT(A) has erred in upholding the order passed by the Learned Assessing Officer under Sec. 144 of the Income Tax Act as legal and valid.

2. On the facts and in the circumstances of the appellant's case and in law, the learned CIT(A) erred in confirming the addition of Rs. 17,30,000/-, which pertains to the cash deposited in the appellant's current bank account (No. 643405050308) at ICICI Bank Limited, Mumbai.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in passing the order without issuing notice of hearing.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the estimated addition of Rs. 21,43,884/- which was added as Business Income by the learned Assessing Officer.



5. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the interest levied u/s 234A and 234B.*

6. *Based on the facts and circumstances of the case, and in law, the learned CIT(A) erred in confirming the contention of the learned ITO that the appellant failed to file the income tax return, despite the return details, including the acknowledgment number and filing date, being submitted in the statement of facts.*

7. *The learned CIT(A) erred both in facts and in law by failing to consider the other grounds of appeal raised by the appellant, which are as under:*

1. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by passing the order under PAN AQBPS5416M, which has been cancelled.

II. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by passing the order with an incorrect address.

III. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by furnishing notices with incorrect addresses, resulting in non-delivery.

IV. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by issuing notices to incorrect email addresses.



V. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by stating that the assessee failed to furnish the return of income for the Asst. Year 2017-18, despite it being filed on time.

VI. The learned Income Tax Officer 31(1)(1), Mumbai, has erred both in facts and in law by stating that during the course of e-proceedings, notices u/s 142(1) of the Act were issued and served upon the assessee through post from time to time.

8. Any other relief which the Hon'ble Tribunal may deem fit in the light of equity, justice and good conscience may also be granted in favour of the appellant.

Your appellant prays that Assessment order passed be quashed.

Further, your appellant prays for the permanent cancellation of PAN AQBPS5416M. And allowed to continued use of PAN ACTPN6476E, as GSTIN 27ACTPN6476E1ZZ, issued by the GST Authority, is based on this PAN.

"The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal."

3. We have heard Ld AR and DR and examined the record. At the outset, it is pointed out by Ld. AR that there is delay in filing the appeal. Ld. AR submitted that the delay in filing the appeal is unintentional and bonafide and prayed that the delay in filing the appeal may kindly be



condoned in the interest of natural justice. In support of his argument, Ld. AR brought to our notice the affidavit filed by the assessee which are reproduced below:-

That this affidavit is being filed for the condonation of delay in filing the appeal against the order of the Commissioner of Income Tax (Appeals)-3, Coimbatore, by the National Faceless Appeal, al Centre, Centre, Delhi (hereinafter referred to as "CIT(A)") passed under Section 250 of the Income Tax Act, 1961, dated 26th September 2023.

That the Appeal order under section 250 was passed on 26-Sep-2023 by the Commissioner of Income Tax (Appeals) Unit 3 Coimbatore National Faceless Assessment Centre Delhi and Digitally Signed by CIT (Appeals) IT Department.

That as of the date of this affidavit, I have not been served with the official copy of the said appeal order.

That I have, however, downloaded a copy of the said order from the official portal which I am enclosing with this affidavit.

That despite the order being available for download, the official service of the order has not been affected on me, which is why the appeal period is considered to be ongoing.

That I am executing this affidavit to ensure that my appeal is not rejected on the ground of limitation and that my appeal is considered to be within the permissible time frame as per law.



That I respectfully request the Honourable Tribunal to consider this affidavit and, accept my appeal as being within the prescribed period of limitation.

That I swear this affidavit for the purpose of ensuring that justice is served and that my appeal is duly considered on its merits.

That the delay in filing the appeal, if any, is due to the following facts / reasons:

Allotment of Multiple PANs: I was allotted two PANs. One PAN (AQBPS5416M) was cancelled, and I used the other PAN (ACTPN6476E) for filing IT returns and registration under the Maharashtra VAT Act 2002 and GST registration. The cancelled PAN (AQBPS5416M) was reactivated from AY 2019-20 by the department on its own.

Switching of PANs by the Department: The Department switched between the PANs and carried out deactivation and activation without any intimation to me.

Incorrect Address in Notices: Despite the Income Tax portal and

records of the Assessing Officer having my correct shop and residential address, all notices were sent to an incorrect address of another person in Uttar Pradesh instead of my correct address in Mumbai, Maharashtra.

Incorrect Address in CIT(A) Order: Although I provided the correct shop address in Form 35 filed with the office of the CIT(A), the order was passed



with an incorrect address in Uttar Pradesh and without issuing a notice of hearing.

Non-Service of Appeal Order: The appeal order has not been served to me to date either in physical mode or electronically. I downloaded the appeal order from the portal and am now filing the appeal.

Personal Hardships: Impact of COVID-19 Pandemic: The COVID-19 pandemic severely impacted my business. My shop, located in a
limitation.

mall, opened very late during the lockdown, and the shift to online Business has adversely affected my offline market & counter sales.

That due to the barsi for my mother in October 2023 and the subsequent marriage of my daughter Sameera in November 2023 in my native place, Village Basni, District Nagore, Rajasthan, I was busy with the preparations and running between Mumbai and my native place. As a result, I could not check the income tax portal. Further the appeal order has not been served to me. And the matter went out of my mind and was unintentionally overlooked.

That the delay caused in filing the appeal is neither intentional nor due to any negligence on my part, but due to the aforesaid bona fide reasons beyond my control.



That I assure this Hon'ble Tribunal that I have a good case on merits and if the delay is condoned, I shall pursue the matter diligently and with utmost sincerity.

That I humbly pray that in the interest of justice, this Hon'ble Tribunal may be pleased to condone the delay in filing the appeal and consider the same on merits.

That the facts stated above are true to the best of my knowledge and belief.

VERIFICATION:

1, Abdul Sattar Nagori, son of Mohamed Akbar Nagori, the above-named deponent, do hereby verify that the contents in the above paragraphs of this affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therein.

4. The Ld. DR objected to the submission of Ld. AR for condonation of delay and submitted for dismissal of appeal.
5. We have considered the rival submissions of both parties. We notice that nothing contrary has been brought on record by the respondents which may contradict and falsify facts alleged by the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition Vs. MST. Katiji&Ors., [1987] 167**



ITR 471 (SC), dated 19.02.1987, was pleased to hold regarding the condonation of delay as under:

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de 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. It is common knowledge that this court has been making of 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.”*
6. In the facts and circumstances as discussed above and because of the law laid down by the Hon’ble Supreme Court in *Collector, Land Acquisition Vs. MST. Katiji & Ors* (supra), we are of the considered opinion that there was sufficient cause for condoning the delay for filing this appeal. Therefore, respectfully following the above decision and for the sake of



overall justice we condone the delay and admit the appeal for adjudication.

7. On merit, Ld. AR argued that the AO as well as Ld. CIT(A) has made and confirmed respectively the addition due to wrongly mentioned PAN no. AQBPS5416M, whereas the assessee filed the ITR for AY 2017-18 by using the PAN no. ACTPN6476E, which the revenue department deactivated without any prior notice and themselves, activated the PAN No. AQBPS5416M and completed the assessment ex-parte.
8. On the other hand, Ld. DR supported the impugned order of Ld. CIT(A) and stating that the appeal is liable to be dismissed.
9. We have considered the rival submissions of both the parties. It is evident that the lower authorities has made the addition ex-parte only on account of wrongly mentioned PAN no. AQBPS5416M, whereas the assessee filed the ITR for AY 2017-18 (copy filed by the assessee on 03.04.2025) by using the PAN no. ACTPN6476E, which the revenue department deactivated without any prior notice and activated the PAN No. AQBPS5416M themselves. The lower authorities have not served the notices on the correct address of the assessee resulting into miscarriage



of justice and they have not sorted out the issue regarding double PAN No. of the assessee. Therefore, impugned order passed by the Ld. CIT(A) is not legally sustainable in the eyes of law.

10. For these reasons, we set aside the impugned order passed by Ld. CIT(A) and restore the matter to the file of Ld. AO for fresh adjudication of the case of assessee after resolving the issue of double PAN no. of the assessee and after giving proper opportunity of hearing to the assessee. The appellant/assessee shall present its case before the Ld. AO within 90 days of this order. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.
11. 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/-

(PADMAVATHY S)
(ACCOUNTANT MEMBER)

Mumbai / Dated 04.04.2025
Dhananjay, Sr.PS

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant



2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
 5. Guard file.
- //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai