



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH(SMC), RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.**

आयकर अपील सं./ITA No.86/RJT/2025

निर्धारण वर्ष/Assessment Year: (2018-19)

Swashray Co-op. Housing Society Ltd., Mavdi Plot Main Road, Panchayat Gruh, Rajkot-360 001	Vs.	Income Tax Officer, Ward-3(1)(1), Rajkot, Aaykar Bhawan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAAAS 6458 F		
(Assessee)		(Respondent)

Assessee by : Shri Mehul Ranpura, AR

Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR

Date of Hearing : 12/03/2025

Date of Pronouncement : 30/04/2025

आदेश / ORDER

Dr. ARJUNLAL SAINI AM;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2018-19, is directed against order passed by National Faceless Appeal Centre (NFAC), Delhi/ Commissioner of Income-tax (Appeals), vide order dated 18.11.2024, which in turn arises out of an order passed by the Assessing Officer, dated 14.07.2020, u/s 154 of the Income Tax Act, 1961.

2. When the matter was called for hearing, the learned Counsel for the assessee at the outset submitted that the appeal has been filed by the assessee belatedly, by 522 days before the ld. CIT(A). The ld. CIT(A) did not condone the delay and dismissed the appeal of the assessee without adjudicating the assessee's appeal on merit. Learned Counsel for the assessee, submitted that because of the mistake of the Advocate/ tax consultant, such a delay of 522 days in filing the appeal before the ld. CIT(A) occurred. The assessee handed over all



the documents and papers relating to filing of the appeal to his advocate, however, his advocate kept all the papers relating to appeal in his drawer and forgot to file the appeal on time. Therefore, ld. Counsel contended that because of the mistake of the Advocate, the assessee should not be penalized, and such delay should be condoned in the interest of justice, and since the learned CIT(A) did not adjudicate the appeal of the assessee, on merit, therefore, the matter may be remitted back to the file of the ld. CIT(A) for fresh adjudication. The ld. Counsel undertakes the responsibility to submit the relevant documents and evidences before the ld. CIT(A) on time.

3. On the other hand, the learned Senior DR for the revenue supported the orders of the Ld CIT(A) and stated that ld. CIT(A) has rightly dismissed the appeal of the assessee on account of late filing the appeal before him. Since the assessee is negligent and sleeps over his rights, therefore those assesseees, who do not take care to file the appeal on time, should not be allowed lenient approach and mercy to condone the delay, the law aids those who are vigilant and not those peoples who sleep over their rights, therefore appeal of the assessee should be dismissed.

4. I have heard both the parties. No doubt, the appeal should have been filed by the assessee on time. It should be noted that the legislature has provided time limits for certain obligations under the Act and these time limits have to be observed. It is compliance requirements imposed by law in the interest of proper regulation of the Act. I am of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law & provisions are laid down to benefit both sides of litigation. Be that as it may, I have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) observes



"4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay."

When I weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. In the assessee's case under consideration, the delay happened because of the mistake of the advocate of the assessee and on account of mistake of the advocate of the assessee, the assessee should not be penalised, for that reliance is also placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing."

5. On professional advice, I note that the Courts and Tribunals have consistently held that in the matter of condonation of delay, pragmatic and liberal approach should be taken. I note that appeal should not be rejected on technical ground of delay and the appeal should be ordinarily decided on merits. The Hon'ble Gujarat High Court has also considered this aspect of condonation of delay in case of Gujarat State Fertilizers & Chemicals Ltd. (283 ITR 149) and held that...

"The position in law is well settled that an assessee should be granted due relief where it is due without standing on technicalities and the revenue must bear the established legal position in mind while dealing with applications seeking condonation of delay. It is necessary that liberal approach is adopted in such a matter so as to ensure that substantive rights are not defeated on the basis of technicalities or limitation. "



6. The learned Counsel adverted my attention to the reasons for condonation of delay and urged for a benign view and sought condonation of delay of 522 days in filing the appeal before the Ld.CIT(A). A perusal of the reasons and sufficient cause explained by the ld. Counsel for the assessee, gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned in filing the appeal before the ld. CIT(A).

7. Since I have condoned the delay and noted that order of ld. CIT(A) is an *ex-parte* order without adjudicating on merit and the order of ld.CIT(A) is not in accordance with mandate of the provisions of Section 250(6) of the Act. Thus, considering the overall facts and circumstances of the case, this appeal is restored back to the file of ld. CIT(A) to decide it afresh on merit. The ld. CIT(A) is directed to adjudicate the appeal on merit. Needless to direct that before passing the order, the ld. CIT(A) shall grant opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and not to cause further delay and seek adjournment without any valid reason and to furnish all the details and his submissions and evidences on various grounds of appeal raised by it, as soon as possible, if so desired, without any further delay. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 30/04/2025.

Sd/-

(Dr. A.L. SAINI)

लेखा सदस्य/ACCOUNTANT MEMBER

राजकोट /Rajkot

दिनांक/ Date: 30/04/2025

DKP Outsourcing Sr.P.S



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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण ,राजकोट