



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

आयकर अपील सं./ITA No.79&80/RJT/2025

निर्धारणवर्ष / Assessment Year: (2018-19 & 2019-20)

Khimji Haridas Modi Kautumbik Trust, Station Road, Porbandar-360575	Vs.	Income Tax Officer (Exemption), Ward-2, Rajkot, IT Office, New Aaykar Bhawan, Vatiaka, Rajkot-360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:AAATS8926R		
(Assessee)		(Respondent)

Assessee by : Ms. Janvi Shah, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav , Ld. Sr. (DR)

Date of Hearing : 12/03/2025

Date of Pronouncement : 30/04/2025

आदेश / O R D E R

Per, Dr. ARJUNLAL SAINI AM;

Captioned two appeals filed by single assessee, pertaining to Assessment Years 2018-19 and 2019-20, are directed against the separate orders passed by the National Faceless Appeal Centre (NFAC)/CIT(A), vide order dated 06.12.2021, which in turn arise out of separate assessment orders/ rectification orders, passed by the Central Processing Centre, Bengaluru/Assessing Officer u/s 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), both dated 14.02.2020.

2. Since the issue involved in both the appeals, are common and identical; therefore, both the appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.



3. At the outset, Learned Counsel for the assessee, informs the Bench that both appeals filed by assessee, are barred by limitation of 1066 days. In both the appeals, assessee filed respective petitions for condonation of delay. In both the petitions, for condonation of delay, the contents and facts are identical and similar, therefore, I shall adjudicate the issue of condonation by taking lead application in ITA No.79/Rjt/2025.

4. Learned Counsel for the assessee, submitted that both the appellate orders passed by the Id. CIT(A), online, show date of passing of the orders, as on 06-12-2021. Hence, the due date of filing of these appeals, against the CIT (A)'s orders, is on or before 05-02-2022. However, these two appeals are filed late by 1066 days on 29-01-2025, before this Tribunal, due to continuous ill health of main trustee, (assessee). The main trustee is a senior citizen, who believed that his tax consultant, Shri Girishbhai Parikh had fled the appeal on time. However, the tax consultant, Shri Girishbhai Parikh, diagnosed with lung cancer, on dated 07.09.2020 (assessee submitted medical reports before the Bench). The tax consultant, Shri Girishbhai Parikh, after having suffered for a long period with lung cancer, has ultimately died on 24.08.2022. (death certificate submitted before the Bench). The main trustee, who is also a senior citizen, was feeling normal illness due to age factor and he used to depend only on his tax consultant, Shri Girishbhai Parikh, who, after having suffered for a long period with lung cancer, has ultimately died on 24.08.2022. Due to the unfortunate events, there was tension environment in the family. Therefore, such delay of 1066 days have occurred in filing these two appeals, which may be condoned in the interest of justice.

5. On the other hand, Ld. Sr.DR for the Revenue submitted that if the delay pertains to pandemic period, Covid-19, then it should be condoned, as per the



direction of Hon'ble Supreme Court in M.A. No.665/2021 and MA No29/2022. The Ld. Senior DR for the Revenue submitted that it was the responsibility of assessee to file appeal on time, and the tax consultant of the assessee, who has died because of lung cancer is not responsible. The assessee-trust could have appointed another tax consultant, if its previous tax consultant was suffering from lung cancer. The assessee, himself, was not filing any illness, hence, in the peculiar circumstances, assessee has failed to explain the sufficient cause, therefore delay should not be condoned.

6. I have heard both the parties on the preliminary issue. I find that condonation prayer for delay in filing of the appeals were also made by both the assessee in Appeal Memo itself in statement of facts mentioned in Item No. 11 of the Appeal Memo-Form No.36. Copy of Medical Certificate of Illness of Late Shri Girishbhai Parikh, and his death certificate and his authority letter has submitted by assessee before the Bench. The Ld. Counsel for the assessee prayed to condone delay in filing of the appeals and give one more opportunity to contest case before Assessing Officer by furnishing documents and evidences to prove its claim. I find that Late Shri Girishbhai Parikh, tax consultant was seriously ill and subsequently died and due to this reason, the delay was occurred. The assessee submitted before me a chart of important events, which is reproduced below:

AY 2018-19	
Return filed for the year	13/07/2018
Intimation U/s. 143(1) issued on	13/05/2019
Application U/s. 154 was made	08/02/2020
Order passed U/s. 154 issued on	14/02/2020
CIT Appeal Filled	15/03/2020
Legal Representative Shri Girishbhai Parikh diagnosed with Lung Cancer	07/09/2020
CIT Appeal Order issued on	06/12/2021
Legal Representative Shri Girishbhai Parikh passed away	24/08/2022



After the sever health deterioration of the consultant late Shri Girishbhai Parikh he could not comply to the notices issued for the said appeals, as he was then undergoing treatment for the lung Cancer.

Letter Issued by the CIT Appeals during the proceedings.	14/01/2021
	16/04/2021
	10/09/2021
	22/10/2021
	15/11/2021

The assessee is a senior citizen and was under the belief that the appeal had been completed and believed that there was nothing pending on his part. The Appeal order was passed before the death of the consultant. After the death of the consultant, Shri Girishbhai Parikh, the assessee approached another tax consultant to file the regular returns of tax and once, they became aware of the order passed by the CIT(A), the assessee then filed the appeal against the said order. The assessee came to know about this when there was demand notice and refund adjustment of the following years.

7. I note that there is a statutory limit prescribed for filing of appeal in the Act. The invocation of the power to condone any delay, major or minor, in observing such time limit is possible only on the satisfaction of the authorities, regarding the appellant having been unable to file the appeal in time due to sufficient cause. The appellant cannot be entitled to automatic admission of appeal filed after the time limit. However, I find that in the instant case the assessee has explained the sufficient cause and reason to condone the delay. I am of the considered view that assessee has explained sufficient cause and therefore delay needs to be condoned. Hence, I condone the delay of both the appeals of assesseees and admit both the appeals for hearing.



8. On merit, at the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent its case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the assessing officer may be granted to the assessee.

9. The Id. DR for the Revenue debarred from objecting the stand of the Id. Counsel.

10. I have heard both the parties and noted that in the assessee's case under consideration, the rectification order was carried out u/s 154 of the Act and the impugned order passed by the Id. CIT(A), is an *ex parte* order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee. I note that Id. CIT(A) has not decided the issue in respect of the ground raised by the assessee in Memo of Appeal, as per the mandate of provisions of section 250(6) of the Act. The Ld. Counsel furnished some details and documents, which were not filed before Assessing Officer. Hence, I am of the view that one more opportunity should be given to the assessee, to plead its cases before the Assessing Officer. I note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest its case. Therefore, I deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh on merits after giving reasonable opportunity of hearing to assessee. Needless to direct that before passing the order afresh, the Assessing Officer shall allow opportunity of hearing to the assessee. The assessee is also directed to furnish all the evidence at the earliest possible of time before Assessing Officer as and



when call for. In the result, ground raised by the assessee in both the appeals are allowed for statistical purposes.

11. In the result, both the appeals are allowed for statistical purposes.

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

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 30/04/2025

Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot