

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE.**

**BEFORE SH. BAGIRATH MAL BIYANI, ACCOUNTANT MEMBER AND
SH. UDAYAN DAS GUPTA, JUDICIAL MEMBER**

**I.T.A. No.511/Ind/2024
Assessment Year: 2014-15**

Smt. Kusum Yadav, 573, Near Rajendra Nagar, Dutta Nagar, Indore, M.P. [PAN:AGAPY2615B] (Appellant)	Vs.	PCIT-1, Indore. (Respondent)
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Appellant by	Sh. S. S. Solanki, AR
Respondent by	Sh. Ram Kumar Yadav, CIT. DR

Date of Hearing	30.01.2025
Date of Pronouncement	24.04.2025

ORDER

Per: Udayan Das Gupta, JM

This appeal has been filed by the assessee against the order of the ld. PCIT-1, Indore, passed u/s 263 of the Act, 1961, dated 06.03.2019 for A.Y. 2014-15.

2. The grounds of appeal taken by the assessee in Form No. 36 are as follows:

“1 That the learned CIT(A) erred in invoking provisions u/s 263 of the Income Tax Act inspite of the fact that the issue was considered by the AO. Issuance of the notice u/s 263 being

illegal and wrong, the order so passed u/s 263 require to be quashed.

2 *That the learned CIT(A) erred in passing an order u/s 263 on the pretext of inadequate enquiry. The order so passed u/s 263 being illegal and wrong, the same require to be quashed.*

3 *That the learned CIT(A) erred in passing order u/s 263 without making any independent enquiry. It is a settled law that if the CIT(A) wants to make any adverse inference, he has to make an independent enquiry to reach to a definite conclusion. The order so passed without making any independent enquiry is illegal and wrong, the same require to be quashed.”*

3. It is pointed out by the registry that this appeal is filed belatedly by 1877 (*one thousand eight hundred and seventy-seven*) days. The assessee has filed an application praying for condonation of delay supported by an affidavit explaining , that the order of the Ld. PCIT was passed u/s 263 of the Act 61 on *6th March, 2019* , against which appeal if any should have been preferred before the Tribunal within sixty days , that is by *5th May, 2019* , but in the instant case the appeal has been filed before the tribunal on *24th June, 2024* , which is belated by more than five years , due to the reason that the counsel of the assessee was not aware of the legal procedure that an appeal lies before the tribunal u/s 253(1)(c), against an order passed by the ld. PCIT u/s 263 of the Act 61.

3.1 The contents of the affidavit are reproduced as under for ready reference:

Rs. 100
ONE HUNDRED RUPEES

INDIA NON JUDICIAL

CM 530099

SERIAL No. 18304124
DATE: 4 JUN 2024

**AFFIDAVIT FOR CONDONATION OF DELAY IN FILING APPEAL
BEFORE THE INCOME TAX APPELLATE TRIBUNAL**

Before the Income Tax Appellate Tribunal at INDORE

In the matter of Smt Kusum Yadav (AGAPY2615B) Assessment Year ; 2014-15

Affidavit of Smt Kusum Yadav aged 56 adult:

That I the above named deponent am well conversant with the facts deposed to below:-

1. That the appeal filed by the Appellant before the Pr. Commissioner of Income Tax (Appeals) was disposed of by order dated 06.03.2019 Pr. Commissioner of Income Tax (Appeals).

SWORN BEFORE ME

[Handwritten signature]

2. That the time for filing of the appeal before the Tribunal was to expire on 05.05.2019

3. The reason of delay is:

We have filed an appeal against the appellate order issued by Pr. Commissioner of Income Tax, under section 263 of Income Tax Act on 24.06.2024 after the expiry of the prescribed period of time. Reason for delay in filing was that the then counsel was under the impression that no appeal of order passed u/s 263 is to be made as the learned CIT(A) has not raised any demand. Therefore, the appeal could not be filed in time.

4. That the memo of Appeal has been filed on 24.06.2024 in the Office of the Tribunal.

DEPONENT

Signed at 24th day of June 2024.

VERIFICATION

the above named deponent do hereby verify on oath that the contents the affidavit above are true to my personal knowledge and nothing material has been concealed or falsely stated. Verified at Indore this 24th day of June 2024.

DEPONENT

SWORN BEFORE ME

D.B. PATEL
NOTARY (ADVOCATE)
23, Eshwar Nagar I, INDORE-10
M.P. INDIA

4. The Ld. AR of the assessee Sri Shailendra Singh Solanki (FCA) present in the court, also retreated the same arguments and prayed for condoning the delay and for admission of the belated appeal to be heard and decided on merits.

5. The Ld. DR objected to the said application for condonation and submitted that the assessee has all along been represented by qualified chartered accountants Mr. *M. Chandaliya (FCA)* before the AO in course of original assessment proceedings and subsequently before the Ld. PCIT in course of 263 proceedings (*as emerging from records submitted as part of paper book*).

5.1 Thereafter, in course of set aside proceedings u/s 143(3) / 263 of the Act, the Ld. counsel, mentioned above, represented the case and filed submissions on *10th November, 2019* before the AO.

5.2 Subsequently, appeal has been filed before the Ld CIT(A) in form 35 on *28th December, 2019*, against the order passed u/s 143(3) / 263 of the Act , dated *13th December, 2019* , through his authorised CA Mr. Shailendra Solanki under email id (*as recorded in form 35*) shailendrasolanki132@gmail.com . Subsequently, against the order passed u/s 250(6) of the Act dated *30th November, 2023*, the second appeal before the tribunal against such order has been filed in form 36 by

the assessee , through his Ld. AR , under same email id shailendrasolanki132@gmail.com , on 12th December, 2023, and the Ld. AR of the assessee *Mr Solanki* , is before the tribunal today representing the matter.

5.3 The Ld. DR, further submitted that the **cause** for delay in appeal filing, stated by the assessee in her affidavit, does not match with the facts on record. He further submitted that as per records initially it was Mr. *M. Chandaliya (FCA)*, who appeared on behalf of the assessee before the Ld. PCIT, up till 263 proceedings, thereafter *Mr Solanki (FCA)* was handling the matter effective from December 2019, onwards, resulting in filing of appeal before first appellate authority on 28th December, 2019, and as such he was very much aware from that date onwards that an order u/s 263 is existing on record. He further submitted that even for sake of argument, even it is accepted that the first counsel was not aware of the legal formalities, (*as stated by the assessee in her sworn affidavit*), the present counsel has been involved in the matter since December 2019, and there is no reason as to why this appeal before the tribunal against the order passed u/s 263, could not have been filed forth with in the month of December, 2019 itself. He further submitted that, even if the reasons put forth by the assessee (in her affidavit) is accepted as true, it will, at best cover the delay commencing from 5th May, 2019,

(sixty days from date of 263 order) till December, 2019 but thereafter, there is absolutely no reasons whatsoever which can explain the delay till June, 2024.

6. We have considered the facts emerging from the records and the submission of the rival counsels and we find that two appeals are pending before the tribunal in respect of the assessee for the same assessment year, (considering same issues relating to capital gains and unexplained cash deposits in bank accounts).

(i) one against order passed by the first appellate authority u/s 250(6) of the Act 61 dated 30th November, 2023 (*filed on 12th December, 2023*) being ITA No 518/Indore/ 2023, (*which has been heard and shall be disposed off vide a separate order*). AND

(ii) the another one against the order of the Ld PCIT passed u/s 263 of the Act, dated 6th March, 2019, (*filed belatedly on 24th June, 2024*) being ITA No 511 / Indore / 2024.

6.1 We observe that in the instant appeal before us that is ITA No: 511/ Indore / 2024, against order u/s 263 of the Act, assessee has not taken any steps to file the appeal within stipulated time against the order dated 6th March 2019, passed u/s 263 of the Act 61, and has waited for the outcome of the proceedings u/s 143(3) / 263 to be completed, which was completed, vide order dated 13th December, 2019 ,

and thereafter, the assessee has proceeded to file appeal before the first appellate authority on 28th December, 2019, and all along the way, the assessee has been guided and supported by qualified chartered accountants in all respects.

6.2 Here also, the assessee has waited for the outcome of the appellate order u/s 250(6) of the Act, which was dismissed by the Ld. CIT(A) vide order dated 30th November, 2023, and the assessee proceeded to file second appeal before the tribunal against the said order on 12th December, 2023.

6.3 On seeing the negative outcome of the appeal before the Ld. CIT (A), the assessee (*by way of a precaution*) thought it prudent to file a belated appeal on 24th June, 2024, against the order u/s 263 of the Act 61, dated 6th March, 2019, which was delayed by more than five years and has filed an affidavit showing insufficient cause, expecting the delay to be condoned.

6.4 We find that in this case the inordinate delay has arisen due to negligence and for want of due diligence on the part of the assessee and this delay is intentional and deliberate and the cause for delay as explained by the assessee in her affidavit, regarding lack of legal knowledge of her counsels is a farfetched theory devoid of merits.

6.5 Before we conclude we would like to refer to the observation of the Hon'ble Apex court in the case of *PATHAPATI SUBBA REDDY (DIED) BY L.Rs. & ORS.*

VERSUS THE SPECIAL DEPUTY COLLECTOR CIVIL APPELLATE JURISDICTION SPECIAL LEAVE PETITION (CIVIL) NO. 31248 OF 2018, order dated 8th April, 2024, where the Hon'ble court has laid down some important points to be kept in mind regarding the law of limitation and condonation of delay.

6.6 The Court was deciding a Special Leave Petition (SLP) preferred by the legal representatives of a man in a land acquisition case. The Two-Judge Bench of Justice Bela M. Trivedi and Justice Pankaj Mithal mentioned the following principles:

- (i) *Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) *The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

(v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

(vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

(vii) *Merits of the case are not required to be considered in condoning the delay; and*

(viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, instant amounts to disregarding the statutory provision.*

6.7 Respectfully, following the law laid down by the Hon'ble Apex court we hold that in the instant case the assessee has not exercised his right to remedy for a long time without sufficient cause and the inordinate delay of more than five years, has arisen out of negligence and want of due diligence and the reasons or cause

stated in the affidavit are not only insufficient but are also factually incorrect considering the materials on record.

6.8 As such in the instant case, we refuse to condone the delay of *eighteen hundred seventy-seven days* in filing this appeal and the appeal is dismissed.

Since we have not admitted the appeal to be heard on merits, we do not adjudicate on the grounds contained in the memorandum of appeal.

7. In the result, the appeal of the assessee bearing **ITA No. 511/Ind/2024** is dismissed.

Order pronounced on 24.04.2025 under Rule 34(4) of the Income Tax Appellate Tribunal Rules 1963.

Sd/-
(BAGIRATH MAL BIYANI)
Accountant Member
AKV

Sd/-
(UDAYAN DAS GUPTA)
Judicial Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

		Date	Initial	
1.	Draft dictated on	02.04.25		Sr.PS/ PS
2.	Draft placed before author	02.04.25		Sr.PS/ PS
3.	Draft proposed & placed before the Second Member			JM/A M
4.	Draft discussed/approved by Second Member			JM/A M
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/ PS
6.	Kept for pronouncement on			Sr.PS/ PS
7.	File sent to the Bench Clerk			Sr.PS/ PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			