

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “E”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 3496/MUM/2024 (A.Y: 2014-15)**

Kanazawa Holdings Pvt. Ltd.,

ITO 12(3)(1)

Ground Floor, Swati Building, North
Avenue Road, Santacruz west,
Mumbai-400 054

Vs. Aayakar Bhavan, M K. Road,
Mumbai -400 020.

PAN: AAACK6521B

(Appellant)

(Respondent)

**Assessee Represented by : Shri Prashant Ghumare, Ld.
AR**

Department Represented by : Shri Hemanshu Joshi, Ld. DR

Date of conclusion of Hearing : 25.03.2025

Date of Pronouncement : 17.04.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 28.12.2022 of Learned Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2014-15, wherein the



Ld. CIT(A) has dismissed the appeal ex parte as despite services of notice, the assessee failed to present its case before the Ld. CIT(A).

2. An application for condonation of delay has been filed by the appellant/assessee stating that statistically there is delay of 499 and narrated the reasons for filing the appeal after the due date. The application is supported by affidavit of the assessee therein contending the reasons for delay in filing the appeal as extracted below:-

I, Mr. Ashok Bhagwandas Awtani, director of Kanazawa Holdings Private Limited, aged about 73 years and presently residing at Villa P-77 Nisreen St, Al Thanayah Fourth, Emirates Hills, Dubai, United Arab Emirates, do hereby state on solemn affirmation as follows:

1. I say that I am a director of Kanazawa Holdings Private Limited ["the Company"]. I say that my wife is also a director of the Company.

2. I say that I am a non-resident and settled in Dubai, along with my family, since 1981. I say that, since then, I am engaged in the business of ready-made garments in Dubai.

3. I say that I wanted to start some business in my motherland India and, therefore, the Company was incorporated under the Companies Act, 1956, w.e.f. 15.01.1988.

4. I say that, due to a number of factors, in 2017, the business operations of the Company in India came to a standstill. Therefore, the Company did not have any employee to look after its affairs in India. To add to the misery, the entire



Indian operations came to a halt when my office premises in Bombay were attached, and part of the office was demolished.

5. I say that, on account of these reasons, the Company did not file audited financials before the Registrar of Companies from 2017, and the last return of income was filed by the Company for A.Y. 2017-18.

6. I say that the assessment order for A.Y. 2014-2015 was passed u/s. 143(3) of the Act on 30.11.2016 and the appeal against this order was filed before the Commissioner of Income tax (Appeals) ['CIT (A)'] on 07.02.2017. I say that, in the last return of income as well as Form 35, the Email address of Mr. P Phalachander ['Mr. PC'], an employee at my office in Dubai [pc@neelkamal.com) was mentioned. The primary Email - ID registered on Income-tax E-filing portal was that of Mr. Santosh Yadav, an employee of the group company, who had also left the service sometime in year 2019. I say that the secondary E mail ID was that of Mr. Shatin Pandya [shatin@mdpandya.com], an employee of the Chartered Accountants, M/s. M D Pandya & Associates ['C.A.'], who was handling the Company's income tax matters.

7. I say that Mr. PC resigned the Company in the year 2020 and moved to India, on account of Covid-19 pandemic. I say that, thereafter, he was associated with the Company only as a consultant, as and when required. Under the circumstances, this Email address of Mr. PC was not used by him or by the Company. However, all the notices of hearing before the CIT (A) were sent on the Email -ID of Mr. PC.

8. I say that, further, because of my business and family commitments, I did not travel to India very often and the current staff in my Dubai office were not



fully conversant with my Indian operations of the Company. Therefore, even I was not aware about the notices of hearing issued by the CIT (A).

9. I say that further the Company was not in contact with its Chartered Accountants, M/s. N M Pandya & Associates ('C.A.') in India between 2017 and 2022 as no return of income or audited accounts were filed since 2017. I say that it was only, somewhere in March 2022, when the group wanted to revive the Company, to file a legal case against Gstaad Hotels Pvt. Ltd., to whom the Company had advanced money, that the Company contacted its C.A. I say that, however, the C.A. resigned in 2022 as the Company wanted to appoint a new auditor. I crave leave to refer and rely upon the relevant email communications-exchanged-between the Company and the auditor.

10. I say that, in the meantime, the following notices were issued by the CIT (A) on the E-mail ID of Mr. PC -

<i>Sr. No.</i>	<i>Date of notice</i>	<i>Due date of compliance</i>
<i>1</i>	<i>29.11.2019</i>	<i>10.12.2019</i>
<i>2</i>	<i>16.03.2020</i>	<i>19.03.2020</i>
<i>3</i>	<i>27.12.2020</i>	<i>25.01.2021</i>
<i>4</i>	<i>01.11.2022 [Enablement of communication]</i>	<i>Only intimation [No response required]</i>

11. I say that it was for the reasons as stated above, the notices issued by the CIT (A) remained to be responded. Consequently, the order of the CIT (A) was passed ex - parte on 28.12.2022. It appears that even this order may have been sent on the E-mail ID of Mr. PC. It was under these circumstances that the Company was not aware about the order of the CIT (A) so passed.



12. I say that, thereafter, penalty proceeding were initiated against the Company for A.Y. 2014-2015. I say that all the penalty notices were issued on the E-mail ID of Mr. Shatin Pandya [shatin@mdpandya.com] as this email ID was registered as secondary Email on the profile details of the income tax e filing portal.

13. I say that, in April May 2024, the office of M/s. M.D. Pandya & Associates forwarded one of the penalty notices dated 24.04.2024, received on the Email - ID [shatin@mdpandya.com] to me. It was only at that time that I became aware that the CIT (A) dismissed the appeal of the Company vide an ex parte order dated 28.12.2022, on the ground of non-compliance of notices and consequently, the penalty proceedings were initiated in 2024.

14. I say that, considering the fact that the office of the C.A. was well conversant and had attended the assessment proceeding and was familiar with the case, the Company proposed the C.A. to take up assignment.

15. I say that, thereafter, I was compiling the necessary details and documents required for effectively responding to the penalty notices. I say that since the matter was about a decade old, and since the employees who were conversant with the facts of the case had already left the Company, being an old man I was facing some difficulty in compiling the necessary details and documents for responding to the notices.

16. I say that, in the meantime, the penalty order u/s. 271(1)(c) of the Act was passed for A.Y. 2014-2015 on 13.06.2024.

17. I say that, thereafter, the Company requested the C.A. to take immediate remedial measures against the all the income tax orders passed till date.



18. I say that, upon knowledge of these facts, I took immediate steps to assist the C.A. to file an appeal against the order of the Ld. CIT (A) before the Income tax Appellate Tribunal, Mumbai ('Hon'ble Tribunal'). The court fees was paid on 9-07-2024 and the appeal was filed before the ITAT on 09.07.2024.

19. I say that, the order was passed by the Ld. CIT (A) for A.Y. 2014-15 on 28.12.2022. The last date to file an appeal against this order before the Hon'ble Tribunal was 26.02.2023. However, I have filed an appeal before the Hon'ble Tribunal on 09.07.2024 against the order of the CIT(A) dated 28.12.2022.

20. I say that, for the above stated reasons and circumstances, there is a delay of 499 (Four Hundred and Ninety Nine) days in filing the appeal before the Hon'ble Tribunal.

21. I say that the delay is purely due to the circumstances beyond the control of the Company and, in any case, not due to any deliberate negligence or carelessness on its part. I further say that, there was no deliberate or willful non compliance on the Company part and the lapse, if at all, was totally unintended. I say that the Company has been always vigilant about the remedies against tax litigations and there has never been any such delay in past on the part of me.

I say that, all that has been mentioned above is true to the best of my knowledge and belief.

3. The assessee put reliance upon the judgment of 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.”*
4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. DR supported the judgment of the Ld. CIT(A). We have considered the arguments and examined the record. Since the assessee has filed affidavit in support of condonation of delay and no contradictory facts has been brought on record by the revenue to the effect that contents of the affidavit are false, we find it expedient in the interest of justice that the assessee has shown sufficient cause for



condonation of delay in filing the appeal before us. The delay in filing the appeal is accordingly condoned.

5. It was argued on behalf of the appellant/assessee that the notice issued by the Ld. CIT(A) were never received or served upon the assessee and as such they could not present its case before the Ld. CIT(A) who proceeded ex parte and decided the appeal on merit without giving effective opportunity of hearing to the assessee and as such the assessee was prevented from presenting its case before the Ld. CIT(A). Therefore, the impugned order suffers from illegality and liable to be set aside. The Ld. DR on the other hand supporting the judgment of the Ld. CIT(A) stating that there is no merit in the appeal and same is liable to be dismissed.

6. We have considered the rival submissions. Section 250 sub section 2(a) of "*the Act*" provides as under:

“Section 250 (2) The following shall have the right to be heard at the hearing of the appeal: -

a. The appellant, either in person or by an authorised representative;”

7. It is evident from the provision that the hearing to be given is not a formality but an effective hearing is sine qua non for the purpose of



upholding the principal of natural justice. We have examined the impugned order and in para no. 5 of the Ld. CIT(A) observed as under: -

5. During the course of appellate proceedings vide notice dated 29.11.2019, 16.03.2020, 27.12.2020 and 01.11.2022 the appellant was requested to file reply. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

8. It is thus evident from the contents of the impugned order extracted above that no effective opportunity of hearing has been given and there is no proof that the notice sent on various dates were duly served or brought to the notice of the appellant/assessee.
9. For these reasons, we are of the considered opinion that matter needs to be restored to the file of the Ld. CIT(A) for giving effective hearing to the assessee who shall present its case before the Ld. CIT(A) within 60 days. The impugned order is accordingly set aside and appeals filed by the assessee are allowed in above terms.
10. In the result, appeal filed by the assessee is **allowed for statistical purposes.**



Order pronounced in the open court on 17.04.2025

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Mumbai / Dated 17.04.2025
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