

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.963/Kol/2024  
Assessment Year: 2006-07**

**Jyoti Ranjan Roy  
represented by Limited Guardian Suvajit Roy.....Appellant  
Block AC-155, Sector-1,  
Salt Lake City, Kolkata-700064.  
[PAN:ADLPR2179P]**

**vs.**

**ACIT, Circle-50, Kolkata.....Respondent**

**I.T.A. No.314/Kol/2017  
Assessment Year: 2006-07**

**Jyoti Ranjan Roy .....Appellant  
Block AC-155, Sector-1,  
Salt Lake City, Kolkata-700064.  
[PAN: ADLPR2179P]**

**vs.**

**ACIT, Circle-50, Kolkata.....Respondent**

**I.T.A. No.261/Kol/2024  
Assessment Year: 2006-07**

**Jyoti Ranjan Roy .....Appellant  
Block AC-155, Sector-1,  
Salt Lake City, Kolkata-700064.  
[PAN: ADLPR2179P]**

**vs.**

**DCIT, Circle-49(1), Kolkata.....Respondent**

**Appearances by:**

Shri J. P. Khaitan, Sr. Counsel, Pratush Jhunjhunwala, Advocate and Arvind Agarwal, Advocate Sretapa Sinha and Shakshi Singh, Ars appeared on behalf of the appellant.

Shri H. Robindro Singh, Addl. CIT-DR & Jitendra Kantilal Surti, JCIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : 06.02.2025 & 21.05.2025

Date of pronouncing the order : May 22, 2025

## **ORDER**

### **Per Rajesh Kumar, Accountant Member:**

The captioned appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-XXXII, Kolkata, Commissioner of Income Tax (Appeals)-15, Kolkata & National Faceless Appeal Centre, Delhi [hereinafter referred to as the "ld. CIT(A)"] dated 31.12.2009, 05.12.2016 & 16.06.2023 respectively for the assessment year 2006-07.

2. Since all the appeals are interconnected and relate to the same assessee, therefore, these appeals have been clubbed and heard together and are being disposed of by this common order for the sake of convenience and brevity.

### **ITA No.963/Kol/2024 A.Y.**

3. At the outset, we observe on the basis of appeal folder that this appeal is time-barred by 5174 days in filing the appeal by the assessee.

4. The facts in brief are that the petitioner, Jyoti Ranjan Roy, is a disabled person and is being represented by limited guardian namely Suvojit Roy. The petitioner is the limited guardian of the assessee and is also his son and has been appointed as the Limited Guardian under the Rights of Persons with Disability Act, 2016 vide order dated January 11, 2024, passed by the Ld. District Judge, North 24 Parganas in Misc. Case No.74/2023 in Suvajit Roy (petitioner) and Debashree Roy Biswas and Others (Consentee petitioner). The instant petition is being filed for condonation of delay in filing the appeal against the order dated 31.12.2009, passed u/s 250 of the Act before the Tribunal.

5. The ld. counsel of the assessee vehemently submitted before us the details or factual aspects of the matter and also the reasons responsible

for delayed filing of the appeal before the Tribunal which are extracted as under:

“1. Your petitioner is the Limited Guardian of the Assessee herein and is also hisson and has been appointed as the Limited Guardian under the Rights of Persons with Disability Act, 2016 (hereinafter referred to as the "Rights of Persons with Disabilities Act"), vide order dated January 11, 2024, passed by the Leamed District Judge, North 24 Parganas in Misc. Case No. 74/2023 (CNR-WBNP01-002174-2023) in Suvajit Roy (Petitioner) and Debshree Roy Biswas and Others (Consentee Petitioner). The instant petition is being filed for condonation of delay in filing the appeal againstthe order dated December 31, 2009, passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as the "the Act") before this Hon'ble Income Tax Appellate Tribunal, Kolkata Bench (hereinafter referred to as the "Tribunal").

2. Your petitioner states that the said order dated December 31, 2009 was received by the Assessee on January 1, 2010. The period of 60 days prescribed by section 253(3) of the Act for preferring the appeal expired on March 1, 2010. The said appeal has been filed on May 1, 2024 and as suchthere has been a delay of 5174 days in preferring the said appeal.

3. Your petitioner states that the assessment for the relevant assessment year 2006-07 was completed by an order dated December 31, 2008 passed by the Assessing Officer making various additions including addition of Rs. 1,62,75,000/- on account of investment in RBI Bonds under section 68 of theAct.

4. Being aggrievedby the aforesaid assessment order dated December 31, 2008, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). However, in the course of the appellate proceedings, proceedings under section 263 of the Act were initiated by the Commissioner of Income Tax vide a notice dated October 26, 2009. As revision proceedings were initiated, the Assessee was advised by histax consultant that the entire assessment proceedings would be at large as no order had been passed by theCommissioner of Income Tax (Appeals)at the time when the notice under section 263 of the Act was issued and the said issue of addition under section 68 of the Act would again be examined.

5. On the basis of the said opinion received, the Assessee, under the said bona fide belief that the aforesaid issue of addition under section 68 of the Act would be re-examined, did not pursue the appeal filed before the Commissioner of Income Tax (Appeals) and also did not file any appeal against the order dated December 31, 2009 passed by the Commissioner of Income Tax (Appeals), subsequently.

6. The Commissioner of Income Tax passed the order dated January 31, 2011 under section 263 of the Act setting aside the assessment order dated December 31, 2008 and directed the Assessing Officer to pass a

*fresh assessment order after considering the observations made in the order dated January 31, 2011. No appeal was filed against the aforesaid order dated January 31, 2011. Copy of the order dated January 31, 2011 is annexed hereto and marked "A".*

7. *Your petitioner states that the aforesaid understanding of the legal implications of the revision proceedings got strengthened by the fact that the Assessing Officer in the course of the give effect proceedings, again raised queries pertaining to the said investments and then by his order dated August 25, 2011 again added the said investments of Rs. 1,62,75,000/- in RBI Bonds to the income of your petitioner. Copy of the order dated August 25, 2011 is annexed hereto and marked "B".*

8. *Being aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). There was a delay of eighteen months in instituting the said appeal owing to the health condition of the Assessee and his wife and also on account of the certain personal difficulties arising in the life of the children of the Assessee. However, the Commissioner of Income Tax (Appeals) did not accept the aforesaid reasons and thereafter by his order dated October 1, 2013 dismissed the appeal of your petitioner on the ground that your petitioner had failed to show sufficient cause for the delay in instituting the said appeal. Copy of the order dated October 1, 2013 is annexed hereto and marked "C".*

9. *Being aggrieved the Assessee preferred an appeal before this Hon'ble Tribunal being ITA No. 2857/Kol/2013. However, during the pendency of the said proceedings, once again proceedings under section 263 of the Act were initiated by the Commissioner of Income Tax. The Commissioner of Income Tax by his order dated March 21, 2014 set aside the assessment order dated August 25, 2011 passed by the Assessing Officer and directed him to pass a fresh assessment order after examining the issues raised by the Commissioner of Income Tax. Copy of the order dated March 21, 2014 is annexed hereto and marked "D".*

10. *Your petitioner states that in the course of the second give effect proceedings, the Assessing Officer issued a show cause notice dated March 23, 2015 wherein he raised queries on the basis of the directions of the Commissioner of Income Tax and vide the query no. 2(vii) once again enquired into the investments made by your petitioner in the RBI Bonds. The Assessee by his letter dated March 26, 2015 duly replied to the Assessing Officer and, inter alia, provided explanations pertaining to the aforesaid investments. However, the Assessing Officer by his order dated March 31, 2015 again added the said investments to the income of the Assessee under section 68 of the Act. Copies of the notice dated March 23, 2015, reply dated March 26, 2015 and the order dated March 31, 2015 are annexed hereto and are collectively marked "E".*

11. *Being aggrieved the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Further, the Assessee was advised by his tax consultant to withdraw the appeal filed before this Hon'ble*

*Tribunal as the order dated August 25, 2011 had been set aside and fresh assessment order had been passed by the Assessing Officer. Following the advice received, the Assessee filed a letter dated July 11, 2016 before this Hon'ble Tribunal craving leave to withdraw the appeal being ITA No. 2857/Kol/2013 and the same was allowed by this Hon'ble Tribunal by its order dated July 11, 2016. Copies of the application dated July 11, 2016 and the order dated July 11, 2016 are annexed hereto and are collectively marked "F".*

*12. Being aggrieved by the order dated March 31, 2015, passed by the Assessing Officer, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) wherein the Assessee had objected to the aforesaid addition pertaining of investments made in RBI Bonds under section 68 of the Act. However, the Commissioner of Income Tax (Appeals) by his order dated December 5, 2016 rejected the appeal on the said issue on the ground that same had been already adjudicated by the Commissioner of Income Tax (Appeals) in his order dated December 31, 2009. Copy of the order dated December 5, 2016 is annexed hereto and marked "G".*

*13. Against the aforesaid order dated December 5, 2016 the Assessee has filed an appeal bearing ITA No. 314/Kol/2017 which is pending before the "C" Bench of this Hon'ble Tribunal wherein the issue pertaining to said addition has also been taken as a ground.*

*14. During the review of the said appeal papers, the said tax consultant advised the Assessee to approach an advocate regularly appearing in tax matters before this Hon'ble Tribunal and the Hon'ble Calcutta High Court (hereinafter referred to as the "Tax Advocate"). Accordingly, the Assessee asked the said tax consultant to brief the said Tax Advocate.*

*15. Your petitioner states that the said Tax Advocate called for papers from time to time and held conferences with the said tax consultant from time to time and even filed paper books. After much deliberation and after reviewing all the documents, the said Tax Advocate pointed out that the advices previously received by the Assessee may not be correct and advised that the Assessee would have to file appeal against the order dated December 31, 2009 along with an application for condonation of delay.*

*16. Your petitioner states that the said tax consultant immediately gave directions to the said Tax Advocate to draft the application for condonation of delay. The said Tax Advocate prepared the necessary documents and shared it with the Assessee and the said tax consultant vide an email dated March 11, 2020. The said Tax Advocate also advised that after filing of the instant appeal, an application should be made for hearing the instant appeal along with the appeal being ITA No. 314/Kol/2017 (hereinafter referred to as "2017 Appeal"). Copy of the email dated March 11, 2020 is annexed hereto and marked "H".*

17. Your petitioner states that immediately after sending the aforesaid email, the covid-19 pandemic had struck and a nation-wide lock-down was imposed. Your petitioner states that after a few months this Hon'ble Tribunal started holding hearings online and the 2017 Appeal was listed for hearing on October 29, 2020. The said Tax Advocate had earlier approached the said tax consultant for instructions and enquired about the status of the said appeal. The said tax consultant informed the Tax Advocate that the appeal could not be filed and no instructions were being received as the Assessee was not keeping well and as such could not be contacted. On the basis of the aforesaid input, the Tax Advocate filed an adjournment application dated October 28, 2020, and the same was duly allowed by this Hon'ble Tribunal. Copy of the application dated October 28, 2020 is annexed hereto and marked "I".

18. Your petitioner states that before the next date of hearing, the Tax Advocate again approached the said tax consultant for instructions, however, no instructions were received. Later the said tax consultant asked the Tax Advocate to withdraw himself from the appeal owing to the lack of instructions. Accordingly, the said Tax Advocate filed an application before this Hon'ble Tribunal vide an email dated January 12, 2021 and appeared before this Hon'ble Tribunal on January 13, 2021 to inform this Hon'ble Tribunal about the same. Copy of the email dated January 12, 2021 is annexed hereto and marked "J".

19. Your petitioner states that at the time of the hearing the Hon'ble Tribunal asked the Tax Advocate to inform the Assessee or its representative of the next date of hearing and allowed him to retire from the matter. Accordingly, the Tax Advocate informed the said tax consultant of the next date of hearing.

20. Your petitioner states that the Assessee had qualified as an architect in the year 1967 and had started a Partnership Firm in the name of CICOI with one Md. Rafiq, Architect, with its registered office at DD-2, Salt Lake City, Kolkata. The said Partnership Firm was dissolved sometime in the year 1982- 83. Since then, the Assessee carried on his business activity under the name of Jyoti Roy & Associates, as a proprietorship firm, at the same address ("Firm"). Your petitioner states that he had joined the Firm in and has since been in charge of management and the projects of the said Firm. However, the entire personal file of the Assessee was handled by the Assessee himself and the petitioner was not aware of the assessments and issues in the tax files of the Assessee.

21. Your petitioner states that the Assessee has been suffering from a progressive disorder affecting his nervous system (Parkinson disease) since July 2018 and his mental health had steadily been deteriorating with him having temporary loss of memory every now and then and had severe difficulty in understanding the current state of affairs or remembering the events of the last few years but would remember old facts and events. Your petitioner states that the said ailment had

*progressed significantly by December, 2019-January, 2020 and the mental health of the Assessee continued to deteriorate. Your petitioner states that on July 2, 2022 the Assessee had suffered a complete loss of memory and was advised complete rest by the doctors and the family members of the Assessee were advised to start certain medications and procedures and to ensure that the Assessee is not faced with any kind of stress. Your petitioner states that since 2023 the Assessee there has been some improvements but the Parkinson's disease irreversible and has no cure and as such it would not be possible for the Assessee to take any decisions on his own and/or understand the implications of his actions. Copies of the medical records of the Assessee are annexed hereto and are collectively marked "K".*

22. *Your petitioner states that he was not aware of the aforesaid 2017 Appeal or the advice given by the said advocate to file an appeal against the order dated December 31, 2009 or any tax disputes or issues of the Assessee.*

23. *Your petitioner states that on he received a notice from this Hon'ble Tribunal mentioning that the 2017 Appeal was fixed for hearing on September 6, 2022. Copy of the notice is annexed hereto and marked "L".*

24. *Your petitioner immediately approached his friend, who was also an advocate practicing in tax matters (hereinafter referred to as the "Second Advocate") with the said notice. Your petitioner states that the Second Advocate asked him to provide the papers but the petitioner stated that he did not have any papers. The said Second Advocate thereafter looked into the website of this Hon'ble Tribunal and found that the appeal had been adjourned from time to time but the details of the tax practitioner appearing could not be found. The Second Advocate thereafter examined the records of this Hon'ble Tribunal and became aware of the fact that the said Tax Advocate was previously looking into the said 2017 Appeal but had retired and also that the Assessee had written a letter to this Hon'ble Tribunal asking for settlement of the issue but was not of sound mind at the time of writing the said letter and not in a position to understand the implications of his actions. The Second Advocate also approached the said Tax Advocate and informed about the medical issues being the reasons for the lack of instructions. The said Tax Advocate was thereafter requested to again take up the 2017 Appeal.*

25. *Your petitioner states that the said Tax Advocate again took up the matter but informed the petitioner that as the Assessee had become a person of unsound mind and that neither Assessee nor the petitioner can prosecute the 2017 Appeal or institute the appeal against the order dated December 31, 2009 and the only way forward is to have the petitioner appointed as a guardian of the Assessee. Your petitioner states that the said 2017 Appeal was listed for hearing on September 6, 2022 when both the advocates appeared and informed the Hon'ble Tribunal of the predicament being faced and that neither the Assessee nor the petitioner can give instructions to prosecute the said 2017 Appeal or file the instant*

appeal. After hearing the said advocates, the Hon'ble Tribunal adjourned the hearing of the 2017 Appeal. Your petitioner states that the aforesaid appeal has been adjourned from time to time as the petitioner was in the process of being appointed as a Limited Guardian under the Rights of Persons with Disabilities Act and the said appeal has been fixed for hearing on 2nd May, 2024, Copy of the adjournment application for the hearing on September 6, 2022 is annexed hereto and marked "M". Your petitioner craves leave to refer to other documents filed before this Hon'ble Tribunal in connection with the matters pertaining to the said Assessee, if necessary.

26. Your petitioner states that he had asked the Tax Advocate about how to proceed with the matter for having him appointed as his father's legal guardian and the said advocate advised the petitioner to approach an advocate who would practice before the Court of the Learned District Judge North 24 Parganas and even gave him reference of a lawyer.

27. Your petitioner states that he had immediately approached the advocate but he could not assist your petitioner. The said Tax Advocate then advised your petitioner to approach another lawyer. Your petitioner accordingly approached another advocate who after understanding the issue called for documents from time to time and thereafter filed a petition under the Rights of Persons with Disabilities Act read with Mental Health Care Act, 2017, being Miscellaneous Case-74/2023 (CNR WBNP01-002174-2023) being Suvajit Roy (Petitioner) and Debashree Roy Biswas and Others (Consentee Petitioners) before the court of the Learned District Judge North 24 Parganas, Barasat. The said petition first came up for hearing on March 2, 2023 and was thereafter heard from time to time.

28. Your petitioner states that the aforesaid application was not progressing much. The Second Advocate advised your petitioner to file a petition before the Hon'ble Calcutta High Court requesting the Hon'ble High Court to direct the Learned District Judge to expeditiously decide the aforesaid application. Accordingly, your petitioner and other members of the Assessee's family filed a petition under Article 227 of the Constitution being CO. 3199 of 2023 in

Re: Suvajit Roy and the Hon'ble High Court vide the order dated September 21, 2023 directed the Learned District Judge to expeditiously take up the hearing of the said application filed before it and dispose the same on an urgent basis. Copy of the order dated September 21, 2023 is annexed hereto and marked "N". Your petitioner craves leave to refer to the petition filed before the Hon'ble Calcutta High Court, at the time of hearing, if necessary.

29. Your petitioner states that the Learned District Judge by his order dated December 1, 2023, appointed Advocate Mr. Rajnish Moulik as a special officer (hereinafter referred to as the "Special Officer") to visit and examine the Assessee and his ability to engage in any effective consultations and convey the implications arising from appointment of

*your petitioner as a Limited Guardian under the Rights of Persons with Disabilities Act and file a report. The said Special Officer filed his report whereby the Learned District Judge was satisfied about the incapacity of the Assessee but the Learned. District by its order dated December 12, 2023, found that the Special Officer did not convey the implications of appointment of a Limited Guardian to the Assessee and directed the Special Officer to again visit the Assessee and convey the same. Your petitioner states that the Special Officer complied with the directions of the Learned District Judge and filed a second report, and after being satisfied with the same, the Learned District Judge by his order dated January 11, 2024, appointed the petitioner as the Limited Guardian of the Assessee in terms sections 14 and 17 of the Rights of Persons with Disabilities Act read with sections 14 and 16 of the Mental Health Care Act, 2017. The certified true copy of the said order was received by the petitioner on January 22, 2024. Copies of the orders passed by the Learned District Judge are annexed hereto and are collectively marked "O". Your petitioner craves leave to refer to the petition and other documents filed in the course of the proceedings before the Learned District Judge, at the time of hearing, if necessary.*

30. *Your petitioner states that he approached the Second Advocate on January 24, 2024, with the aforesaid order who advised that they sit with the said Tax Advocate for examining the matter for the assessment year 2006-07. Accordingly, your petitioner and the Second Advocate met the Tax Advocate on January 27, 2024 and appraised him of the order passed by the Learned District Judge. Your petitioner states that the said Tax Advocate examined the papers and again advised that the appeal against the order dated December 31, 2009 ought to be filed but the same would have to be amended and also an application for condonation of delay would have to be prepared.*

31. *Your petitioner states that he was advised by the Second Advocate that they should also approach a Senior Advocate practicing before this Hon'ble Court with the respect to the appeal sought to be filed. Accordingly, your petitioner approached a Senior Advocate on February 12, 2024, who after examining the papers concurred with the view of the Tax Consultant.*

32. *Your petitioner states that he again approached the said Tax Advocate on February 14, 2024 and requested him to take steps for filing the appeal along with the Second Advocate and provided with the drafts previously sent on February 22, 2024. Your petitioner states that the said Tax Advocate held conferences from time to time and sought for various documents and details and prepared the application for condonation of delay and the Form 36 on April 17, 2024 and shared a copy of the same over an email. Copy of the email is annexed hereto and marked "p".*

33. *Your petitioner states that it took him some time to provide further details sought and ready the annexures and that the instant appeal. Further, there were some factual issues that needed to be clarified. Accordingly, the petitioner and the Second Advocate met the said Tax*

*Advocate on April 25, 2024 to review the papers and revise the appeal and the application for condonation of delay. After making the necessary changes and adding the necessary documents, the instant petition and the appeal were filed on May 1, 2024 after a delay of 5174 days.*

34. *Your petitioner states that he has at all times acted in a bona fide manner and that the instant delay has occurred due to the incorrect understanding that once proceedings under section 263 of the Act had been initiated the entire assessment is at large and the mental health or disability of the Assessee. The said understanding is evident from the letter dated July 11, 2016 filed on behalf of the Assessee with this Tribunal. Further, the said understanding was reinforced by the manner in which both the give effect assessment proceedings were conducted by the Assessing Officer with the Assessing Officer raising queries pertaining to the said investments and adding the same in the computation of income.*

35. *Your petitioner states that the Assessee has a good case on merits. There has been no negligence or laches on your petitioner's or the Assessee's part and that your petitioner has been bonafide and diligent in pursuing the matter. The delay in preferring the instant appeal was occasioned by circumstances completely beyond your petitioner's control.*

36. *In the circumstances, it is just and proper that the delay of 5174 days which has occurred in preferring the instant appeal be condoned. Unless the said delay in preferring the appeal is condoned, your petitioner and/or the Assessee will suffer irreparable loss and prejudice.*

37. *This application is made bona fide and in the interest of justice.*

*In the circumstances, your petitioner Most humbly prays for-*

*(a) Condonation of the delay of 5174 days in preferring the appeal against order dated December 31, 2009;*

*(b) Such further or other order or orders be made and/or directions be given as would afford complete relief to your petitioner.*

*And your petitioner, as in duty bound, shall ever pray."*

6. Besides, the Id. AR vehemently submitted that since the assessee was advised by the counsel not to file the appeal and hence this delay has happened which was totally beyond the control of the assessee. The subsequent counsel appointed thereafter advised the assessee to file the appeal with condonation of delay. The Id. AR contended that the assessee should not be penalised for the wrong advice given by the counsel and therefore, the delay may kindly be condoned. The Id. AR relied on

the decision of N. Balakrishnan vs. M. Krishnamurthy in Civil Appeals Nos.4575-76 of 1998 dated 03.09.1998 and Mool Chandra vs. UOI reported in (2025) 1 Supreme Court Cases 625.

7. The ld. DR strongly opposed the contentions made by the ld. AR of the assessee and stated that such an inordinate delay may not be condoned though he admitted that the assessee is a disabled person who is being represented by limited guardian. The ld. DR submitted that the reasons stated by the assessee are insufficient and inadequate and therefore, the appeal of the assessee may be dismissed in limine on the ground of being barred by limitation.

8. We have heard the rival submissions and perused the materials on record. We find that the assessee is a disabled person and the petition filed by the petitioner namely Suvajit Roy who is appointed as the Limited Guardian under the Rights of Persons with Disability Act, 2016 vide order dated January 11, 2024, passed by the Ld. District Judge, North 24 Parganas in Misc. Case No.74/2023 in Suvajit Roy (petitioner) and Debashree Roy Biswas and Others (Consentee petitioner). The instant petition is being filed for condonation of delay in filing the appeal against the order dated 31.12.2009 passed u/s 250 of the Act which was received by the assessee on 01.01.2010 and the due date of filing of the appeal was 01.03.2010 u/s 253(3) of the Act, however, the appeal was actually filed on 01.05.2024 and thus there is a delay of 5174 days in filing the appeal. We note that the assessment in this case was made vide order dated 31.12.2008 by the Assessing Officer making various additions including qua investments of Rs.1,62,75,000/- in RBI Bonds u/s 68 of the Act. The assessee preferred an appeal against the said order before the ld. CIT(A), however, during the pendency of the appeal, the ld. Pr. CIT exercised his revisionary jurisdiction u/s 263 of the Act of the Act by issuing notice u/s 263 on 26.10.2009. Thereafter, on the

advice of the tax counsel, the assessee did not pursue the appeal filed before the CIT(A) who stated that the addition made u/s 68 of the Act could be re-examined. In the set aside proceedings, the ld. CIT(A) in the meantime passed order u/s 250 of the Act dated 31.12.2008. The ld. PCIT passed order u/s 263 on 31.01.2011 setting aside the order dated 31.12.2008 thereby directing the Assessing Officer to make the assessment afresh. Even no appeal was filed against the order passed u/s 263 of the Act. We note that during the set aside proceedings, the Assessing Officer examined the issue of investments in RBI bonds and added the same in the order dated 25.08.2011. The assessee preferred appeal before the ld. CIT(A) against the order passed u/s 143(3)/263 of the Act dated 25.08.2011 with a delay 18 months due to ailing health. The ld. CIT(A) dismissed the said appeal by refusing to condone the delay as the causes/reasons shown by the assessee were not sufficient according to the ld. CIT(A). Thereafter, the assessee moved to the Tribunal and during the pendency of the appeal before the Tribunal, the ld. PCIT again invoked the jurisdiction u/s 263 vide order dated 21.03.2014 again setting aside the assessment and directing the Assessing Officer to make the assessment afresh after examining the issue as mentioned in the revisionary order. We note that in the second effect-giving proceedings, the Assessing Officer again enquired the issue of investment in RBI bonds and the assessee replied vide letter dated 26.03.2015 explaining the said investment. The Assessing Officer again in the order dated 31.03.2015 added the said investment u/s 68 of the Act. The assessee again preferred appeal before the ld. CIT(A) against the said order. In the meantime, the then counsel of the assessee advised the assessee to withdraw the appeal already filed before the Tribunal against the order dated 25.08.2011 on the ground that the assessment order had been set aside and fresh assessment has been framed and following the said advice of the counsel, the assessee filed a letter dated

11.07.2016. Again, the ld. CIT(A) vide order dated 05.12.2016 rejected the appeal of the assessee on the ground that the same had already been adjudicated by the ld. CIT(A) in his order dated 31.12.2009. Now, the assessee again preferred an appeal before the Tribunal on 05.12.2016 challenging the addition confirmed by the ld. CIT(A). In the meantime, the assessee approached a new advocate who is regularly appearing in tax matters in Tribunal and High Court who advised the assessee that the assessee has committed a mistake by not filing the appeal against the order dated 31.12.2009 passed by the ld. CIT(A) and the same should be filed with condonation petition immediately. Thereafter, the appeal was filed before the Tribunal along with condonation petition and the appeal was listed for hearing on 29.10.2020 when the lockdown was already there. It was also stated before us that the assessee is an architect and was qualified in the year 1967 and had started a partnership firm in the name of CICOI with one Md. Rafiq, Architect, with its registered office at DD-2, Salt Lake City, Kolkata. The said Partnership Firm was dissolved sometime in the year 1982-83. Since then, the Assessee carried on his business activity under the name of Jyoti Roy & Associates, as a proprietorship firm, at the same address and since been in charge of management and the projects of the said Firm. However, the entire personal file of the Assessee was handled by the Assessee himself and the petitioner was not aware of the assessments and tax issues in the tax files of the Assessee. We note that the assessee was suffering from Parkinson disease, which is a nervous disorder and he was not able to attend his personal affairs and the same position continued and even the assessee suffered a lot mental difficulties due to the said disease. Thereafter, due to ailing health of the assessee, the petitioner namely Suvajit Roy was appointed as the Limited Guardian under the Rights of Persons with Disability Act, 2016. Having considered the above contentions regarding the conditions and facts

before us, we are of the considered view that the delay in filing the appeal has occurred due to incorrect understanding of fact that once the proceedings u/s 263 of the Act were initiated, there is no need to penalise for further wrong advice given by the counsel and even in the set aside proceedings, time and again, the issue of investment in the RBI bond was examined by the Assessing Officer. Considering these facts and circumstances, we are of the view that the reasons for the delay are bona fide, genuine and sufficient and therefore delay needs to be condoned. The case of the assessee is supported by the decision of N. Balakrishnan vs. M. Krishnamurthy (supra), wherein, the Hon'ble Apex Court has held that the sufficient cause should be considered liberally and length of delay is no matter, explanation for such delay is the sole criterion. The Hon'ble Apex Court further held that in the absence of mala fide explanation or dilatory strategy, the court should condone the delay. The relevant part of the said decision of extracted below:

*"It is axiomatic that condonation of delay is a matter of discretion of the court [Section 5](#) of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

*The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

*Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their*

remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide [Shakuntala Devi Jain Vs. Kuntal Kumari \[AIR 1969 SC 575\]](#) and [State of West Bengal Vs. The Administrator, Howrah Municipality \[AIR 1972 SC 749\]](#). It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Riderless Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date.

The appeals are disposed of accordingly.”

8.1 We further reply on another decision of the Hon'ble Supreme Court in the case of Mool Chandra vs. UOI (supra), wherein, the Hon'ble Apex Court has held that the cause of the delay must be considered instead of the length of the delay. The relevant part of the said decision of extracted below:

*“20. Be that as it may. On account of liberty having been granted to the appellant to pursue his remedy in accordance with law, yet another O.A. No.2066 of 2020 along with an application for condonation of delay came to be filed. The delay was not condoned by the Tribunal on the ground that it was filed more than one year after the impugned order came to be passed. No litigant stands to benefit in approaching the courts belatedly. It is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is the cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of “sufficient cause”, irrespective of the length of delay same deserves to be condoned. However, if the cause shown is insufficient, irrespective of the period of delay, same would not be condoned.”*

8.2 Considering the above decision of the apex court and the reasons cited before us, we are inclined to condone the delay by admitting the appeal for adjudication. The assessee has also filed an application for admitting of additional evidences before us vide letter dated 03.02.2025 submitting the details of paper-book running from pages 58 to 102 therewith. The additional evidences comprise the details of investment in RBI bond, the balance sheet as on 31.03.2005 and 31.03.2006, ledgers for the F.Ys 2004-05 and 2005-06, copies of pass-book, confirmation of account, certificate of repayment dated 12.09.2005 of Rs.44,26,050/- for 9% bonds issued by the RBI, confirmation dated 28.09.2018 issued by Syndicate Bank along with statements of bank accounts. After hearing both the parties and considering these new documents, we note that these are the basic and important documents which are required to be examined and considered for correct adjudication of the issue. We are of the opinion that these additional evidences are required to be examined at the end of the Assessing

Officer. Accordingly, we admit the same and restore the matter to the file of the Assessing Officer to examine the additional evidences filed by the assessee and thereafter, to decide the issue of investment in RBI Bonds accordingly as per the facts and law. The appeal is allowed for statistical purposes.

9. **ITA No.261/Kol/2024** – At the outset, we observe that there is a delay of 178 days in filing the appeal before the Tribunal. After hearing the rival contentions and perusing the material on record, we note that the delay occurred due to bona fide and sufficient reasons as discussed above in detail and accordingly, the said delay is condoned and the appeal is admitted for adjudication.

10. In this appeal, a penalty of Rs.54,78,165/- u/s 271(1)(c) of the Act was imposed by the Assessing Officer by passing an order on 29.06.2018. The ld. CIT(A) by passing an ex parte order dated 16.06.2023 has confirmed the addition without giving the reasonable opportunity of hearing to the assessee to contest and produce necessary documentary evidences or materials.

11. After hearing both the parties and perusing the materials on record, we are of the opinion that this matter/issue also requires fresh examination at the end of the Assessing Officer. Accordingly, we restore the matter to the file of the Assessing Officer to examine the matter de novo and decide accordingly.

12. **ITA No.314/Kol/2017** – Since the issues involved in this appeal is identical to one as decided by us in ITA No.963/Kol/2024. Therefore, our decision in ITA No.963/Kol/2024 would, mutatis mutandis, apply to this appeal i.e. ITA No.314/Kol/2017. Accordingly, ITA No.314/Kol/2017 is restored to the file of AO and the appeal also allowed for statistical purposes.

13. In the result, all the captioned appeals of the assessee are allowed for statistical purposes.

***Kolkata, the 22<sup>nd</sup> May, 2025.***

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Dated: 22.05.2025.

RS

*Copy of the order forwarded to:*

1. Jyoti Ranjan Roy
2. ACIT, Circle-50, Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches