



**आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"**  
**RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.125/RJT/2025**

**निर्धारण वर्ष/Assessment Year : 2011-12**

Becharbhai Dharamshibhai Vasoya 603, Guru Krupa Towers, Near PGVCL Office, Limda Chowk, Rajkot-360 001	बनाम/ Vs	Income Tax Officer, Ward-1(1)(1), Rajkot, Aayakar Bhavan, Race Course, Ring Road, Rajkot-360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AJEPV 0081 B</b>		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Assessee by : Shri Sanjay Mehta, AR  
राजस्व की ओर से/Revenue by : Shri Dheeraj Kumr Gupta, Sr-DR

सुनवाई की तारीख/**Date of Hearing** : **14/05/2025**  
घोषणा की तारीख/**Date of Pronouncement** : **21/05/2025**

**आदेश/Order**

**Per Dr. Arjun Lal Saini, A.M**

Captioned appeal filed by the assessee, pertaining to Assessment Year 2011-12, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 17.07.2023, which in turn arises out of an order passed by Assessing Officer u/s 143(3) r.w.s 147 of the Act on 14.12.2018.

2. The appeal filed by the assessee before the Tribunal is barred by limitation of 508 days. The contents of the petition for condonation of delay are reproduced below:



*“3. That, I was not able to reply due to lack of procedural knowledge and my age is 75 years and the health conditions are not so good at this time.*

*4. That, m CA Dilip Khunt having staff named Disha Khunt was looking out my appeal matters but she left job and due to that reason, the regular online proceedings was not complied.*

*5. That, my representative became aware of the order under section 250 of CIT(A) when the show cause notice for penalty u/s 271(1)(c) dated 07.01.2025 received from the Assessing Officer.*

*6. That due to above reasons, there is delay in filing of ITAT appeal.*

*7. That, there is no mala fide intentions to late filing of an appeal to the ITAT.”*

3. The Ld. Counsel for the assessee explained the sufficient reasons stating that assessee is a most senior citizen having no knowledge of taxation matter and suffering age old problem. The Ld.Counsel for the assessee stated that staff of his tax consultant, left job who handling assessee’s taxation matter. The Ld. Counsel for the assessee stated that when assessee received demand notice/ penalty notice then immediately he contracted tax consultant and filed appeal before Tribunal with condonation of delay to explain sufficient cause and stated that such delay may be condoned.

4. However, Ld. Senior DR for the Revenue opposed the prayer of assessee for condonation of delay and stated that delay should not be condoned.

5. 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."*

6. 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. "*



7. 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 508 days in filing the appeal before the Tribunal. 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 Tribunal and appeal may be decided on merit.

8. On merit, at the outset itself, the Ld. Counsel for the assessee assailed the impugned order passed by Ld.CIT(A) contending that assessee could not represent his case before Ld.CIT(A) and Ld.CIT(A) confirmed the action of Assessing Officer who made addition on account of unaccounted income of Ra.42,50,158/-. The Ld. CIT(A) without giving further opportunity dismissed the appeal of assessee. The assessee was not allowed fair and reasonable opportunity of hearing. The Ld. Counsel of the assessee submits that assessee has a good case on merit and is likely to succeed, if one more opportunity is given to assessee to contest his case before ld CIT(A). The Ld. Counsel of the assessee submits that he undertakes on behalf of assessee to be more vigilant in future and to file all necessary details and evidence on first date of hearing.

9. On the other hand, Ld.Sr-DR relied on the order of lower authorities.

10. I have heard both the parties and have gone through order of lower authorities carefully. I find that before me, the ld. Counsel of the assessee has made a limited prayer for restoring the appeal to the file of Ld. CIT(A) for the reasons that assessee could not file evidence and his submission in response to notice of hearing of appeal and every time adjournment was sought for. Considering the facts and circumstances of the case and undertaking by ld. Counsel of the assessee that assessee will be more vigilant in future in making compliance, the matter is restored back to the file of Ld.CIT(A) to decide the



issue afresh on merit, after giving reasonable opportunity of being heard to assessee. Needless to direct that before passing order afresh, the Ld.CIT(A) shall provide reasonable opportunity to the assessee. The assessee is also directed to be more vigilant and to make timely compliance of the notice issued by Ld.CIT(A). The assessee is directed to promptly comply with all notices of hearing and in case of any further default on part of the assessee, Ld. CIT(A) would be at liberty to pass order on the basis of materials available on record, in accordance with law. With these directions, the grounds of appeal of assessee is allowed for statistical purposes.

11. In the result, appeal filed by the assessee is allowed for statistical purpose.

**Order pronounced in the open court on 21/05/2025.**

Sd/-

**(Dr. A.L. SAINI)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

राजकोट/Rajkot

दिनांक/Date: 21/05/2025

DKP Outsourcing Sr.P.S

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

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

By order/आदेश से,

// True Copy //

सहायक पंजीकार

आयकर अपीलीय अधिकरण, राजकोट