



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.202/RJT/2025  
निर्धारण वर्ष/Assessment Year : 2016-17

Rameshbhai Khimjibhai Tank Ramesh Kunj, 17-Laxmi Wadi, Opp. Kamlesh Building, Rajkot-360 002	बनाम/ Vs	Income Tax Officer, Ward- 2(1)(3), Rajkot, Income Tax Department, Race Course, Ring Road, Rajkot-360 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>FKEPS 0218 D</b>		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती 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** : **23/05/2025**

आदेश/**Order**

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

Captioned appeal filed by the assessee, pertaining to Assessment Year 2016-17, 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 20.02.2023, which in turn arises out of an order passed by Assessing Officer u/s 143(3) of the Act on 05.12.2018.

2. Appeal filed by the assessee for assessment year 2016-17, is barred by limitation by 725 days. The assessee moved a petition for condonation of delay,



requesting the Bench to condone the delay. The contents of the petition for condonation of delay, are reproduced below:

- “1. That my father Rameshbhai Khimjibhai Tank expired on 21.04.2021.*
- 2. That I was unaware about the ongoing income tax proceedings under his name and the fact that order u/s 250 by CIT(A) was issued on 20.02.2023.*
- 3. That as soon as I became aware about issue of notice u/s 250 for the assessment year 2017-18, a response to the same was submitted dated 07.03.2025 and an appeal was allowed by the CIT(A) vide order dated 11.03.2025.*
- 4. That subsequently, I decided to file this appeal for Assessment Year 2016-17 before the Hon’ble Income Tax Appellate Tribunal.*
- 5. That I accept the negligence and provide assurance that the same will never be repeated and also confirm that there were no mala fide intentions in not filing the appeal within due date.*
- 6. That I also request the authorities to accept the appeal in the light of justice as the matter involved is purely based on suspicion and assumptions.*

*I hereby declare that the above information is true and correct to the best of my knowledge and belief. This affidavit is for the purpose of pending proceedings under Income Tax Act.”*

3. The Learned Counsel for the assessee, submitted that delay of 725 days had occurred because of mistake of the tax consultant. Apart from the contents and the sufficient cause mentioned in the affidavit for condonation of delay, Ld. Counsel for the assessee also submitted that the tax consultant to whom the appeal was assigned has not informed the assessee about the status of passing the order of Ld.CIT(A) and he was negligent. Therefore, because of the mistake of tax consultant, assessee should not be penalized. The Ld. Counsel submitted that Ld.CIT(A) passed *ex parte* order on 20.02.2023 by serving various notices through electronic mode. Therefore, the delay has occurred and this delay may be condoned, and the appeal may be decided on merit.

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, on the ground that it was the mistake of the assessee’s, tax consultant.



5. I have heard both the parties on this preliminary issue. 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 725 days in filing the appeal before the Tribunal. A perusal of the reasons and sufficient cause explained by the Id. 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 and I admit the appeal of the assessee for hearing on merit.

8. On merit, at the outset itself, Learned Counsel for the assessee, assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice which was not followed as assessment order and order u/s 250 passed by lower authorities considering only the form of the issue involved and not the substance behind the same. The Ld. CIT(A) dismissed the appeal without adjudicating the same on merit and evidences already submitted during the assessment proceedings. The Id. Counsel submitted that assessee wants to submit some details and documents before the Assessing Officer and contended that in the interest of justice,



another opportunity should be given to contest the appeal before the Assessing Officer.

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 assessment was carried out u/s 143(3) of the Act and the addition of Rs.18,35,402/- made by AO by disallowing 50% of expenditures claimed without any basis and without considering the variety of expenses incurred as mentioned in books of account. The AO has also erred in law by not issuing show cause notice, at all, which resulted in irregularities and defect in assessment proceedings. 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. Hence, I am of the view that one more opportunity should be given to the assessee, to plead his case 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 his 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 the 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 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 23/05/2025.**

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

राजकोट/Rajkot

दिनांक/ Date: 23/05/2025

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