

**आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

**आयकरअपीलसं./ITA No.938/RJT/2024**

**निर्धारणवर्ष /Assessment Year: 2012-13**

SurendrabaRaghuvirsinh Chudasama Shree Daledshwar Krupa 3, Navalnagar,Mavdi Main Road Nr. Prakash School, Rajkot. PAN : AIYPC 8223 D	बनाम Vs.	The ITO, Ward-3(1)(1) Rajkot.
(अपीलार्थी/Assessee)	:	(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Assessee by : Shri Samir Bhuptani, Id.AR

राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Id.SR.DR

सुनवाईकीतारीख/Date of Hearing : 04/03/2025

घोषणाकीतारीख/Date of Pronouncement : 02 /06/2025

**ORDER**

**Per,Dr. Arjun Lal Saini, AM:**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2012-13, is directed against order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 19.09.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 147of the Act, dated 8.12.2019.



2. The grounds of appeal raised by the assessee, in this appeal, are as follows:

- “1. Ld. CIT(A) erred in law as well as on facts in passing the ex-parte appellate order u/s. 250 of the Income Tax Act, 1961 which is bad in law and without appropriate jurisdiction.*
- 2. Ld. CIT(A) erred in law as well as on facts in presuming that the assessee is not interested in prosecuting the appeal.*
- 3. Ld. CIT(A) erred in law as well as on facts in not adjudicating the grounds of appeal raised by the assessee in her appeal memo and thereby dismissing the appeal for want of prosecution.*
- 4. Ld. assessing officer erred in law as well as on facts in re-opening the assessment u/s. 147 of the act, which is bad in law and without appropriate jurisdiction. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.*
- 5. Ld. assessing officer erred in law as well as on facts in passing the assessment order under section 143(3) r. w. s. 147 of the act which is bad in law. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.*
- 6. Ld. assessing officer erred in law as well as on facts in making addition of Rs.8,75,000/- u/s. 69A of the act on account of deposits made in the bank account. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.”*

3. The appeal filed by the assessee is barred by limitation by 384 days. The assessee moved an application for condonation of delay, requesting the Bench to condone the delay. The Learned Counsel for the assessee, has explained the reasons for delay stating that in the assessee`s case, the appellate order under section 250 of the Income tax Act 1961, for the assessment year 2012-13 has been passed on 19<sup>th</sup> September 2023. In view of the same, the present appeal ought to have been filed before Hon'ble Income Tax Appellate Tribunal, on or before 18<sup>th</sup> November, 2023. The assessee is a lady and a semi-literate person having age of 78 years. The assessee is not versed with the e-mail and Income Tax proceedings being conducted under electronic mode, where notices are delivered on email. This is the maiden experience of the assessee in her entire life tenure. In the course of the appellate proceeding three notices of hearing were issued and all the notices were uploaded on web-portal of the assessee and also served on the mail-id viz,



jyotindrasinh999@gmail.com, which is belonging to son of the assessee, who rarely access his e-mail. However, since at the time of registering the PAN, the advocate has used this email and accordingly all the notices and orders were served on this email id, which was not accessed by the son of the assessee. Under such circumstances, the assessee's son was not aware of the emails sent by the department and consequently the assessee too was unaware about the hearing notices uploaded on portal as well as the appellate order passed and hence she could not inform her tax consultant in turn. The advocate appointed by the assessee was also not co-operating with the assessee and did not find the status of the order of the I.CIT(A), on time. When that the assessee has received a physical notice of penalty dated 11.11.2024. (Copy of the same is submitted before the Bench), the assessee sent the notice to the tax consultant who checked e-proceeding status in case of the assessee and came to know that an ex-parte appellate order has already been passed on 19.09.2023 and also advised to file appeal against the appellate order before Hon'ble Income Tax Appellate Tribunal. Therefore, learned Counsel prays the Bench, that delay in filing the appeal may be condoned and the assessee`s appeal may be remitted back to the file of the learned CIT (A) for fresh adjudication.

4. On the other hand, the Id.DR for the Revenue submitted that the assessee has failed to explain the sufficient cause. The mistake of the son of the assessee cannot be considered as a sufficient cause to condone such a delay. Therefore, on such flimsy reasons, the delay of 384 days should not be condoned and appeal of the assessee may be dismissed on this score only.

5. We have heard both the parties on this preliminary issue. We find that, in addition to the mistake of the son of the assessee, there was a mistake of the advocate of the assessee, in accessing the portal of the Income tax Department to know the status of the assessee`s appeal. We note that there was a presence of



the assessee, before the assessing officer and the assessee submitted the required documents and details before the assessing officer, and assessment order was framed under section 143(3) r.w.s 147 of the Income tax Act, therefore, it cannot be said that assessee was not effectively pursuing the appeal. Therefore, Id.Counsel for the assessee contended that delay may condoned, and appeal may be heard on merit. While considering a delay in filing the appeal, the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

- (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 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.*
- (3) Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.*
- (4) When substantial justice and technical consideration are pitted against each other, the 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.***
- (5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*
- (6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

6. Considering, above facts and circumstances, we note that mistake of an advocate of the assessee, may be considered a sufficient cause to condone the delay. 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 assesseees 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 assesseees cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing.*

7. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the view that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay.

8. We have heard both the parties on merit. We note that in the assessee's case under consideration, the assessment was carried out u/s 143(3)r.w.s. 147 of the Act and the impugned order passed by the Id. CIT(A), is an ex parte order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee.

9. The Id. DR for the Revenue debarred from objecting the stand of the Id. Counsel, if the matter is restored back to the file of the Id. CIT (A) for fresh adjudication.

10. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the



ld. CIT(A). We note that the ld. CIT(A) did not discuss the assessee's case on merits based on the material available before him, hence it is a violation of principle of natural justice. We 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, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 02/06/2025.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 02/06/2025

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आदेशकीप्रतिलिपिअब्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकरआयुक्त/ CIT
- आयकरआयुक्त(अपील)/ The CIT(A)
- विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

**Sd/-**  
**(DR.ARJUNLAL SAINI)**  
**ACCOUNTANT MEMBER**



By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot

Date  
10.03.2025

1. *Draft dictated on*
2. *Draft placed before author*
3. *Draft proposed & placed before the second member*
4. *Draft discussed/approved by Second Member.*
5. *Approved Draft comes to the Sr.PS/PS*
6. *Kept for pronouncement on*
7. *File sent to the Bench Clerk*
8. *Date on which file goes to the AR*
9. *Date on which file goes to the Head Clerk.*
10. *Date of dispatch of Order.*
11. *Draft dictation sheets are attached*