

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.184/RJT/2024

Assessment Year: (2012-13)

Manish Rameshchandra Shah L/h Late Jyotiben Rameshchandra Shah 1, Jalaram Colony, Porbandar-360 575	Vs.	Income Tax Officer, Ward-2(3), Porbandar, Kuberland Mark, Svrpoad, Opp. Sadhana Studio, Porbandar-360 575
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BGBPS 7937 N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी ओर से/ Appellant by	Shri Vimal Desai, AR
प्रत्यर्थी की ओर से/Respondent by	Shri Abhimanyu Singh Yadav, Sr. DR
सुनवाई की तारीख/Date of Hearing	05/05/2025
घोषणा की तारीख /Date of Pronouncement	30/06/2025

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short “the ld. CIT(A)/NFAC”] dated 13.02.2024, which in turn arises out of an assessment order passed by Assessing Officer, u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 21.10.2019.

2. At the outset, Learned Counsel for the assessee submitted that appeal filed before Ld. CIT(A) was barred by limitation of 1132 days.

The *ex- parte* assessment order was passed on 21.10.2019, therefore appeal should have been filed before learned CIT(A), within one month from the date of assessment order, which is on 22.11.2019. However, actually the appeal was filed before Ld.CIT(A) by the assessee, on 04.01.2023. Therefore, the appeal filed by assessee, before Ld.CIT(A) is barred by limitation of 1132 days. The Ld. Counsel for the assessee submitted a condonation petition, before the Bench, requesting the Bench to condone the delay. The learned Counsel stated that same condonation petition was filed before the learned CIT(A) also, however, learned CIT(A) did not condone the delay and dismiss the appeal of the assessee, on account of condonation of delay. The contents of the petition for condonation of delay, is reproduced below:

*“With reference to the above, I request you as under:*

*Ex parte assessment order u/s 144 of the income tax act, 1961 was passed in the case of my deceased mother Jyotiben R Shah on 21/10/2019. The same was served to our family member on 29/10/2019. My mother heavenly passed away on 09/09/2019. The assessment order was passed after her death.*

*My mother did not left any major asset after her death. Under the circumstances we were under bona fide belief that as my mother is no more, we need not require to do anything in this case after her death. It is orally advised to us by our relatives and friends that there cannot be any assessment on deceased person and therefore, this order is out of jurisdiction and illegal in the eyes of law and therefore, does not have legal leg to stand. Therefore, we need not required to do anything. Therefore, we did not take any action for filling the appeal.*

*Later on income tax department has started to send reminder letter for recovery of demand. An issue letter dated 10/11/2021 having DIN No. ITBA/RCV/F/17/2021-22/1036806625(1) was received by me. Copy of the letter is enclosed herewith. Moreover, penalty notices were issued in the month of December 2021. On receipt of notices and recovery letters we contacted tax consultant for this matter and he explained us regarding our tax and compliance liabilities and also advised us for filling the appeal.*

*On tax consultant's advice, I had immediately paid appeal filling fees of Rs. 1000/- on 21/12/2021. Copy of appeal filling fees challan is also enclosed herewith.*

*As my mother was expired, I was required to register myself as legal heir in portal. Accordingly, I tried to register myself as legal representative of my mother on 04/01/2022. As required, I had also executed power of attorney on 06/01/2022 for registering myself as authorized representative. However, I failed to register myself as legal representative due to some technical reason on income tax portal. I tried again and again many times but I could not succeed. I was continually trying to upload form No. 35 on income tax web portal. One such try was also done on 21/01/2022. Copy of saved draft form No. 35 dated 21/01/2022 is also enclosed herewith. However, I could not file the appeal.*

*Meanwhile, I had also contacted Jamnagar CIT appeal for accepting manual appeal. Before accepting they went on to take confirmation Ahmedabad PCIT office for taking manual appeal. I also contracted Aykar Sampark Kendra for accepting manual appeal but they denied. This all took long time.*

*After lots of try and telephonic follow up finally I could file the appeal on 04/01/2023. Therefore, there is delay of 1,132 days in filling the appeal.*

*Under the circumstances I respectfully submit that delay in filling the appeal is not intentional and was beyond my control.*

*Affidavit confirming above facts is enclosed herewith. Pg-19-20*

*At the outset I also respectfully state that on merits we have good case. Addition of Rs. 13,94,000/- has been made for total cash deposited in my mother's bank account. Substantial part of cash deposit is from earlier withdrawal. Out of total cash deposit of Rs. 13,94,000/- amount of Rs. 7,00,000/- is backed by cash withdrawal. Remaining amount was deposited from saving on hand and amount withdrawal from my father's bank account. Without prejudice to above I also state that on legal side also I have a strong case on merits. As settled position of law assessment order in the name of deceased person has no legal leg to stand. The principal is followed by many appellate authorities.*

*This being meritorious case, we kindly request your honour to condone delay in filing appeal and decide the case on merits.*

*We invite your honours kind attention to some judicial observation with regards to condonation of delay on facts of present case.*

*The Supreme Court in the case of Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. AIR 1987 SC 1353 held as under:*

*The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature Page 0795 is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of Justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that: Ordinarily a litigant does not stand to benefit by lodging an appeal late. 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.*

*In Ramlal, & Chhotelal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762], it was laid down that in showing sufficient cause to condone the delay, it is not necessary that the applicant/appellant has to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient that the applicant/appellant would explain the delay caused by the period between the last of the dates of limitation and the date on which the appeal/application is actually filed. What constitute sufficient cause cannot be laid down by hard and fast rules.*

*In New India Insurance Co. Ltd. v. Smt. Shanti Misra [AIR 1976 SC 237], Supreme Court held that discretion given by Section 5 should not be defined or crystalized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction.*

*In Inder Singh v. Kanshi Ram [AIR 1917 PC 156] it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.*

*In Shakuntala Devi Jain v. Kuntal Kumari & Ors. [(1969) 1 SCR 1006], a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.*

*In Smt. Milavi Devi v. Dina Nath [(1982) 3 SCR 3661, it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and case was remitted for decision on merits.*

*In O.P. Kathpaliaa v. Lakhmir Singh (dead) & Ors. [(1984) 4 SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned.*

*In Smt. Prabha Ram Parkash Kalra [(1987) Supp. SCC 338], Supreme Court had held that the court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.*

*In Ram Krishan & Anr. v. U.P. State Roadways Transport Corpn. & Anr. [(1994) Supp. 2 SCC 507], Supreme Court had held that although the story put forward by the applicant for not filing the application for compensation under the Motor Vehicles Act within the period of limitation was not found convincing but keeping in view the facts and circumstances and cause of justice, the delay was condoned and the appeal was set aside and the matter was remitted to the Tribunal to dispose it on merits.*

*In view of above facts and circumstances of the case and various judicial pronouncement, we humbly request your honour to kindly take lenient view and consider our case sympathetically and condone delay in filing appeal before CIT(A) NFAC.”*

3. Therefore, Ld. Counsel contended that based on the contents given in the petition for condonation of delay, the delay in filing the appeal, before Ld. CIT(A) should be condoned.

4. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the revenue, strongly objected the prayer for condonation of delay. The ld DR pointed out that such huge delay of 1132 days, before Ld.CIT(A) cannot be condoned merely on the reasons explained by the legal heirs of assessee. The assessee was died during assessment

proceedings, therefore, legal heirs of the assessee should have taken steps to file appeal before Ld. CIT(A). However, the legal heirs failed to do so. Therefore, the delay in filing the appeal before Ld.CIT(A) should not be condoned and appeal of assessee may be dismissed.

5. However, Ld. Sr-DR for the Revenue again submitted that if the Bench, wants to condone the delay before Ld.CIT(A), then a cost of Rs.10,000/- should be imposed, on the legal heirs, on account of non-compliance attitude of the legal heirs of the deceased- assessee.

6. We have heard both the sides and gone through the relevant material on record. We note that assessee under consideration had died on 21.10.2019 and after her death, the assessment order was framed. The legal heirs were engaged in funeral activities and last rites ceremony. The Ld. Counsel for the assessee stated that legal heirs of the deceased- assessee, did not inform the Assessing Officer as they thought that since assessee has died, so prosecution has come to an end. Therefore, legal heirs of assessee did not pursue the appeal. However, on receipt of demand notice, the legal heirs came to know about the case and then they took the step for filing appeal before Ld. CIT(A). In this process, there was delay in filing the appeal before Ld. CIT(A).

7. We 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. "*

We have gone through the petition for condonation of delay, and the sufficient cause explained by the assessee, in the petition for condonation of delay, as reproduced above. The learned Counsel for the assessee, adverted our attention to the reasons for condonation of delay before Ld.CIT(A) and urged for a benign view and sought condonation of delay of 1132 days in filing the appeal before the Ld.CIT(A). A perusal of the reasons and sufficient cause explained by the ld. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee (deceased). Accordingly, the delay is condoned in filing the appeal before the ld. CIT(A).

8. On merit, the Ld. Counsel for the assessee prayed before the Bench to restore the matter back to the file of AO for de novo assessment. The ld. Counsel for the assessee assailed the impugned order of ld CIT(A) by contending that during the appellate proceedings, notices of hearings were not served upon assessee. Therefore, assessee could not represent his case before Ld. CIT(A). The Ld. Counsel also pointed out that during assessment proceedings also, there was non-compliance by the assessee, hence, Assessing Officer had framed the assessment order u/s 144 of the Act. The Learned Counsel stated that one more opportunity should be granted to the assessee to represent his case before AO, as the assessee wants to submit additional evidences before the assessing officer to prove his claim.

9. The ld. DR for the Revenue debarred from objecting the stand of the ld. Counsel.

10. We have heard both the parties on merit and noted that order passed by the assessing officer as well as order passed by the Ld. CIT(A), both are *ex- party* order. We also note that Ld. CIT(A) has not admitted the appeal of the assessee, due to huge delay and ld CIT(A) did not pass the order, as per the mandate of provisions of section 250(6) of the Act, as the order was passed by Ld.CIT(A), without hearing the assessee, and without considering details available in the assessment proceedings. That is, Ld. CIT(A) did not pass order on merit based on the material available on record. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. However, on account of non-compliance attitude of the Legal heirs of assessee, we have imposed cost of Rs.2000/- which has been deposited by Legal heirs in the Prime Minister National relief fund. 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 Assessing Officer 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 her stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Ld. CIT(A), [after condoning the delay in filing the appeal before Ld.CIT(A),] and remit the matter back to the file of Assessing Officer to adjudicate the issue afresh on merits.

11. It is needless to say that the assessee will be at liberty to adduce any evidences as deemed relevant before the assessing officer at the time of assessment proceedings, in consequence to this order and the Assessing Officer shall, allow the assessee adequate opportunity of being, heard and to make relevant submissions, and then pass a speaking order which is fair and judicious. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 30/06/2025 in the open court.

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

राजकोट /Rajkot

दिनांक/ Date: 30/06/2025

*DKP Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ 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 अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, राजकोट