

**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT  
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 96/Srt/2025 & 221/SRT/2024  
(Assessment Year: 2012-13)

Runi Impex, 32, Madhav Kung Society, Dabholi Road, Surat-395004	Vs.	Deputy Commissioner of Income Tax, Circle-3(2), Surat
<b>[PAN No.AAMFR2340A]</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Satish Mody, AR
<b>Respondent by:</b>	Shri Ravindra Sindhu, CIT DR

<b>Date of Hearing</b>	16.07.2025
<b>Date of Pronouncement</b>	18.07.2025

ORDER

**PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:**

These are appeals filed by the assessee (in ITA No. 96/Srt/2025) relating to assessee's appeal against order passed by Principal Commissioner of Income Tax-3 (in short "PCIT"), Surat vide order dated 31.03.2017 passed for A.Y. 2012-13 and the assessee's appeal against order passed by Ld. CIT(A) (ITA No. 221/Srt/2024) with respect to assessee's appeal against the consequential assessment order passed by the Assessing Officer in pursuance to directions given in the 263 order dated 31.03.2017 passed by PCIT (which is the subject matter of assessee's appeal in ITA No. 96/Srt/2025).

2. The assessee has raised the following grounds of appeal:

**ITA No. 96/Srt/2025 (A.Y. 2011-12)**

**Ground NO.1**

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“1. The learned Principal Commissioner of Income Tax -3, Surat, erred in passing the order under section 263 of the Act, even though it is capricious in nature and has been made ignoring the established and undisputed facts. The said order is contrary to the facts and circumstances of the case and the applicable provisions of the Act. The order passed is bad in law, invalid and in excess of and/or in want of jurisdiction and otherwise illegal.

*The appellant craves leave to add, to alter or amend the aforesaid Grounds of Appeal, if called for, before the disposal of the appeal.”*

**ITA No. 221/Srt/2025 (A.Y. 2012-13)**

**GROUND NO.1**

*The learned CIT(A) erred in upholding the order passed by the learned DCIT Circle 3(2), Surat, under section 143(3) rws 263 of the Act, even though it is capricious in nature and has been made ignoring the established and undisputed facts. The said order is contrary to the facts and circumstances of the case and the applicable provisions of the Act.*

**GROUND NO.2**

*The learned CIT(A) erred in upholding the disallowance of claim of Rs.3,83,63,225/-, made u/s.10AA of the Income Tax Act, though the same was contrary to the facts and circumstances of the case and the evidence available on record.*

**GROUND NO.3**

*The learned CIT(A) erred in upholding the disallowance of Rs.1,83,073/-, u/s.40A(3) of the Income Tax Act, though the same was contrary to the facts and circumstances of the case and the evidence available on record.*

*The appellant craves leave to add, to alter or amend the aforesaid Grounds of Appeal, if called for, before the disposal of the appeal.”*

**We shall first start with assessee’s appeal in ITA No. 96/Srt/2025 for A.Y. 2012-13**

3. At the outset, we note that the appeal of the assessee is time barred by more than 8 years. The assessee had filed an application for condonation of delay alongwith the Affidavit in which the reason cited for the present delay is that the consultant of the assessee was under bona fide belief that no appeal

was required to be filed against the order under Section 263 of the Act since the issue could be argued before the Ld. CIT(A) post the passing of assessment order by Assessing Officer, pursuant to directions in the 263 order. However, subsequently, the assessee was advised by another consultant that appeal could be filed against the 263 order as well and accordingly, the assessee also filed appeal before ITAT, *albeit* with a delay of over 8 years. Accordingly, the assessee submitted that it was on the incorrect advice of its earlier consultant that there is a delay of 8 years in filing the present appeal.

4. On going through the facts of the assessee's case, we are of the considered view that assessee has given no justifiable reason for the inordinate delay of over 8 years in filing of the present appeal. In this regard, it would be noteworthy to mention a few relevant dates. The 263 order which is the subject matter of the present appeal was passed on 31.03.2017. The consequential assessment order (pursuant to 263 order) was passed on 08.12.2017. Thereafter, the assessee filed appeal against the assessment order passed pursuant to 263 order before Ld. CIT(A) and Ld. CIT(A) dismissed the appeal of the assessee vide order dated 29.12.2023. The assessee filed appeal against the order passed by Ld. CIT(A) before the ITAT, Ahmedabad on 27.02.2024. Subsequent to filing of appeal against the CIT-A's order, the assessee then filed an appeal against the original 263 order before ITAT on 27.01.2025 i.e. after a delay of over 8 years. Therefore, it is seen that the assessee has given no cogent reason whatsoever to justify the delay of over 8 years in filing of appeal against original 263 order, especially taking into consideration the fact that even the appeal against the CIT-A's

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order against the consequential order passed by the Assessing Officer in pursuance to 263 proceedings had also been filed by the assessee in February 2024 i.e. before the date of filing of the present appeal before us. Accordingly, looking into the totality of the facts as highlighted above, the assessee has not been able to give any justifiable reason for the inordinate delay of over 8 years in filing of the present appeal.

5. It would be useful to looking into the relevant judicial precedents on the subject dealing with the circumstances when delay should or should not be condoned.

6. In the case of **Mani Mandir Sewa Nyas Samiti Ramghat Ayodhya vs. CIT [2020] 119 taxmann.com 383 (SC)**, the Hon'ble Supreme Court held that where assessee sought for condonation of delay of four and half years in filing appeal against order of Tribunal on ground of ailment of manager but High Court declined to condone delay on ground that there was nothing on record to show that manager was suffering from ailments which did not permit him to take initiative for filing of appeal, SLP against said decision was to be dismissed. In the case of **Amit Cotton Industries [2022] 136 taxmann.com 328 (SC)**, the Hon'ble Supreme Court held that delay of 520 days in filing special leave petition cannot be condoned without satisfactory explanation and hence, dismissed. In the case of **Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project [2008] 17 SCC 448 (Para 6)**, the Hon'ble Supreme Court has made the following observations in this regard:

*“13. Whether the respondent had satisfied the court that it had sufficient cause for not preferring the appeals within the prescribed time?”*

*Section 5 of the Limitation Act provides for extension of prescribed period of limitation in certain cases and confers jurisdiction upon the court to admit any application or any appeal after the prescribed period if it is satisfied that the appellant or applicant had sufficient cause for not preferring such appeal or application within the prescribed period.*

*The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is : Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. **The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and `do not slumber over their rights.'** The question for consideration is whether the averments disclosed any sufficient cause to condone the inordinate delay of 1724 days in filing the appeals.”*

7. In the case of **Tractors & Farm Equipments Ltd. [2007] 104 ITD 149 (Chennai) (TM)**, the ITAT held that where assessee justified delay of 310 days in filing appeal before Tribunal by stating that Commissioner (Appeals)’s **order was misplaced and forgotten and when same was found while sorting out unwanted papers**, steps were taken for preparation of appeal, the delay in filing of appeal before Tribunal could not be condoned as same was due to negligence and inaction on part of assessee and assessee could have very well avoided delay by exercise of due care and attention. While rejecting the assessee’s application for condonation of delay, the Tribunal made the following observations:

*“The delay cannot be condoned simply because the appellant’s case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, **it must be proved beyond the shadow of doubt that the appellant was diligent and was not guilty of negligence, whatsoever.** The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. **The cause for the delay in filing the appeal, which by due care and attention, could have been***

*avoided, cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, or inaction, or want of bona fides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. **Seekers of justice must come with clean hands.***

*In the instant case, the assessee justified the delay only with reference to the affidavit of its director. In the said affidavit it was stated that the Commissioner (Appeal)'s order was misplaced and forgotten. It was found while sorting out the unwanted papers and thereafter steps were taken for the preparation of the appeal and consequently the delay was caused. That clearly showed that the delay was due to the negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by the exercise of due care and attention. There existed no sufficient and good reason for the delay of 310 days. Therefore, reasonings adduced by the Accountant Member were to be concurred with. [Para 8]"*

8. The ITAT Hyderabad in the case of **T. Kishan [2012] 23 taxmann.com 383 (Hyderabad)** held that in condoning delay in filing appeal, it must be proved beyond shadow of doubt that assessee was diligent and was not guilty of negligence whatsoever.

9. In the case of **C. I. Builders (P.) Ltd. vs. Principal Commissioner of Income-tax [2025] 174 taxmann.com 534 (Madhya Pradesh) [02-05-2025]**, the High Court held that where assessee contended that there was delay of 6-7 years in filing appeal before Tribunal due to negligence of counsel engaged to file appeal, since assessee was aware of counsel's negligence when ex-parte orders was passed by Commissioner (Appeals) but assessee failed to exercise any care to enquire about status of second appeal and tried to shift responsibility towards his lawyer, appeal was to be dismissed as time barred.

10. In the case of **Royal Stitches (P.) Ltd. vs. Deputy Commissioner of Income-tax [2023] 156 taxmann.com 361 (Madras)[21-09-2023]**, the High

Court held that where assessee had not given 'sufficient cause' for condoning huge delay of 1072 days in filing appeal, delay could not be condoned.

11. Accordingly, looking into the assessee's set of facts as highlighted above and the judicial precedents on the subject, we are not inclined to condone the delay of over 8 years in filing of the present appeal.

12. In the result, the appeal of the assessee is dismissed.

**Now we shall deal with assessee's appeal against order passed by Ld. CIT(A) in ITA No. 221/Srt/2024**

13. In the present case, at the outset, the Counsel for the assessee submitted that there was a delay of 85 days in filing of appeal before Ld. CIT(A) and without considering the merits of the case, Ld. CIT(A) dismissed the appeal of the assessee without condoning the delay in filing of appeal before him. Before us, the Counsel for the assessee submitted that the only issue involved is with regards to production of Form 56F for claiming deduction under Section 10AA of the Act, and the assessee is trying collate the necessary documents. Further, the Counsel for the assessee submitted that in a similar matter in assessee's own case in ITA No. 220/Srt/2022 dated 03.04.2025, wherein CIT(A) had refused to condone the delay, ITAT Surat had restored the matter to the file of Ld. CIT(A) for de-novo consideration, after imposing a cost of Rs. 10,000/- on the assessee. Accordingly, it was submitted that similarly for this year as well, in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration, subject to payment of similar cost of Rs. 10,000/-

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14. In response, Ld. DR also did not object to the matter being restored to the file of Ld. CIT(A) for de-novo consideration, in the interest of justice.

15. In view of the arguments of the Counsel for the assessee of Ld. DR, in the interest of justice, the matter is hereby restored to the file of Ld. CIT(A) for de-novo consideration subject to payment a cost of Rs. 10,000/- to be deposited with the Prime Minister Relief Fund for the purposes of getting the matter set-aside to the file of Ld. CIT(A).

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

17. In the combined result, the appeal filed by the assessee in ITA No. 96/Srt/2024 for A.Y. 2012-13 is dismissed and the appeal of the assessee in ITA No. 221/Srt/2024 is allowed for statistical purposes.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 18/07/2025**

**Sd/-**

**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 18/07/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

**Sd/-**

**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat