

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 2608/Mum/2025  
(Assessment Year: 2008-09)**

Parmar Buildtech Parmar Estate Parekh Nagar, Opp. Swami Vivekanand Int Scho Kandivali West, Mumbai - 400067	Vs.	National Faceless Appeal Centre, Delhi
PAN/GIR No. AAJFP2574P		
(Applicant)		(Respondent)

Assessee by	Shri. Jayesh Kala
Revenue by	Shri. Virabhadra S. Mahajan, SR. DR.

Date of Hearing	10.07.2025
Date of Pronouncement	04.08.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order 15.02.2024 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi (NFAC) for the assessment year 2008-09.

2. There is delay in filing the present appeal and in order the same to keep the condoned, the assessee has filed the separate application along with the separate affidavit. The contents of the same are reproduced as below:

*“Affidavit of Mr BAKUL J PARMAR, PARTNER of Parmar Build Tech*

*I, Mr Bakul J Parmar, aged about 57 Years son of Mr Jayantilal Parmar resident of India, do solemnly affirm and state as under:*

*1. That I am the PARTNER of Parmar Build Tech, the assessee, and as such well conversant with the facts deposed to below.*

*2. That the order was passed under section 250 by the learned assessing officer on 15th February 2024.*

*3. That the time for filing of the appeal before The Hon'ble Income Tax Appellate Tribunal (ITAT) was to expire on 15th April 2024.*

*4. That it comes to our knowledge that appeal was inadvertently filed with The Assistant Commissioner of Income Tax (ACIT) on 2nd April 2024 under CIRCLE 42(1)(1) instead of filing it with The Hon'ble Income Tax Appellate Tribunal (ITAT). This error, which was due to a staff oversight, resulted in a delay in filing the appeal with The Hon'ble Income Tax Appellate Tribunal (ITAT)*

*5. That the inadvertent filing with The Assistant Commissioner of Income Tax (ACIT) came to our notice during a review of correspondence documents, wherein it was noted that the appeal had not been filed to The Hon'ble Income Tax Appellate Tribunal (ITAT), as intended.*

*6. That the Memo of Appeal has been filed on 10.03.2025 in The Hon'ble Income Tax Appellate Tribunal (ITAT).*

*I, Mr Bakul J Parmar, PARTNER of the above-named appellant, do hereby verify that the contents of para 1 to 6 are true to the best of my knowledge and belief and nothing material has been concealed and no part of it is false.*

*Signed and verified at Mumbai on 07th day of March, 2025.”*

3. On the other hand, the Ld. DR the contested the said application and submitted that there is no sufficient cause for condoning the delay.

4. After having heard the counsel for both the parties on this application for seeking condonation of delay and considering the entire factual position as explained before us and also keeping in view the principles laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs MST Katiji and others 1987 AIR 1353 Supreme Court***, wherein it has been held that where substantial justice is pitted against technicalities of non-deliberate delay, then in that eventuality substantial justice is to be preferred. In our view the principals of advancing substantial justice is of prime importance. Hence considering the explanation put forth by the Assessee by justifiably and properly explaining the delay which occurred in filing the appeal and construing the expression "sufficient cause" liberally we are inclined to condone the delay in filing the appeal before us. Therefore, we condone the delay and admit the appeal to be heard on merits.

5. Since we have condoned the delay therefore the appeal is registered to be heard on merits.

6. We have heard both the counsel for both the parties and perusal of material available on record, we notice that impugned penalty in question was initiated by the order of assessment dated 28.12.2010. However, the said order of assessment has already been quashed by the coordinate bench by the ITAT in ***ITA No. 4123/Mum/2012 and 1100/Mum/2013 in appeal title of DCIT Vs. Parmar Build Tech decided on 12.09.2022.***

7. Now since the order of assessment itself has been quashed therefore in our view no penalty emanating from the said order is sustainable in the eyes of law as the foundation of initiation of the penalty stands quashed.

8. Therefore considering the above factual and legal preposition we direct to delete the penalty and consequently allow the grounds raised by the assessee.

9. The appeal filed by the assessee stands allowed.

Order pronounced in the open court on 04.08.2025

Sd/-

**(PRABHASH SHANKAR)  
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

Mumbai, Dated 04/08/2025

Disha Raut, Stenographer

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

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

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai