IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI

BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)

AND
OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 4383 & 4384/MUM/2025
Assessment Year: 2013-14

Arti Shailen Topiwala B-701, Parimal Apartment, C.D. Barfiwala Road, Andheri West, Mumbai- 400058 **PAN NO. AACPT 3505 D** **Appellant**	***Vs.***	ITO, Ward 34(1)(1), Mumbai Income Tax Appellate Tribunal, Mumbai- 400020 **Respondent**

Assessee by	:	Mr. Rajesh Shah
Revenue by	:	Mr. Surendra Mohan –SR. DR

Date of Hearing	:	18/08/2025
Date of pronouncement	:	26/08/2025

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders, both dated 13.07.2025, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, in relation to penalty u/s 271(1)(b) of the Income Tax Act, 1961 (in short the 'Act') and 271(1)(c) of the Act respectively. Both these appeals being connected with the single assessee and same were

heard together and disposed off by way of this consolidated order for sake of convenience.

2. Firstly, we take up the appeal of the assessee against the penalty order u/s 271(1)(b) of the Act. The grounds raised by the assessee are reproduced as under:

> *"1. On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in dismissing the appeal in limine and by the said action confirmed penalty levied of Rs. 10,000 under Section 271(1)(b) of the Act.*
>
> *2. On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not considering the reasonable and sufficient cause for not filing an appeal in time. The learned CIT(A)-NFAC ought to have admitted the appeal and condoned the delay in filing of an appeal for reasonable cause.*
>
> *a) On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not passing an order on merit.*
> *b) The appellant submits that the CIT(A)-NFAC is duty bound to pass an order on merit.*
>
> *4. On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not considering the following Grounds of Appeal:*
>
> *a) On facts and circumstances of the case and in law, the learned Assessing Officer erred in imposing a penalty of Rs. 10,000 under Section 271(1)(b) of the Act.*
>
> *The penalty is levied even before the assessment order was served on the appellant and therefore, no opportunity was provided to the appellant to rebut the allegation. The appellant submits that imposing the penalty without providing an opportunity is bad in law.*
>
> *b) On facts and circumstances of the case and in law, the learned Assessing Officer erred in imposing penalty.*
> *The appellant had not received any notice of hearing and therefore there was no question of attendance before the AO. There was a reasonable cause for non appearance before the AO.*
>
> *5. The appellant craves leave to add, amend, modify, substitute and / or cancel any of the ground of the appeal."*

3. Briefly stated, the relevant facts of the case are that the assessee filed its return of income electronically on 28.03.2015 declaring a total income of ₹6,38,220/-. The said return was selected for scrutiny and statutory notice under section 143(2) of the Income-tax Act, 1961 ('the Act') was duly issued and served upon the assessee. However, subsequent notices issued under section 142(1) of the Act were not complied with. Consequently, the assessment was completed under section 144 of the Act, i.e., by way of best judgment assessment, vide order dated 17.03.2016.

3.1 On account of the assessee's non-compliance with notice under section 142(1) dated 13.10.2015, the learned Assessing Officer issued a show-cause notice under section 271(1)(b) of the Act on 18.01.2016, which was duly served. As there was no response to the said notice as well, penalty of ₹10,000/- was levied under section 271(1)(b) of the Act by order dated 29.07.2016.

3.2 Against the said penalty order, the assessee preferred an appeal before the learned CIT(A) on 22.02.2024, after an inordinate delay of 2673 days. The learned CIT(A), upon consideration of the application for condonation of delay, held that the assessee had failed to establish 'sufficient cause' for such inordinate delay and accordingly rejected the appeal *in limine* without entering into the merits of the controversy.

3.3 Aggrieved thereby, the assessee has approached this Tribunal. In appeal before us, it is urged that the assessee, while filing affidavit before the appellate authority, had inadvertently relied upon grounds pertaining to other proceedings and failed to place on record specific reasons for delay in the instant matter. It is now submitted that the lapse was inadvertent and the assessee seeks liberty to file a proper affidavit explaining the delay.

4. We have given consideration to the rival submissions. The law on condonation of delay is well settled that length of delay is not decisive; what is material is the sufficiency of cause and the advancement of substantial justice. Courts have consistently held that technicalities should not defeat adjudication on merits, unless mala fides or dilatory tactics are manifest.

4.1 In the circumstances, we are of the considered view that the ends of justice would be better served if an opportunity is granted to the assessee to rectify the lapse. We accordingly set aside the order of the Commissioner (Appeals) and remit the matter to his file. The assessee shall be at liberty to file a duly sworn affidavit setting forth cogent reasons for the delay, which the Commissioner shall examine in accordance with law. Should the delay be condoned, the Commissioner shall proceed to adjudicate the levy of penalty under section 271(1)(b) on merits.

4.2 The appeal is, therefore, allowed to the extent indicated above. Ground No. 2 stands allowed for statistical purposes; the remaining grounds, being rendered academic, are dismissed as infructuous.

5. Now, we take up the appeal of the assessee related to penalty u/s 271(1)(c) of the Act. The grounds raised by the assessee in its appeal are reproduced as under:

> *"1. On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in dismissing the appeal in limine and by the said action confirmed penalty levied of Rs.58,48,075 under Section 271(1)(c) of the Act.*
> *2. a) On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not considering the reasonable and sufficient cause for not filing an appeal in time. The learned CIT(A)-NFAC ought to have admitted the appeal and condoned the delay in filing of an appeal for reasonable cause.*
>
> *b) Without prejudice to above, the quantum appeal filed by the appellant for A.Y. 2013-14 has been set aside by the hon'ble ITAT and therefore, the penalty does not stand on its own leg.*
>
> *3. a) On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not passing an order on merit.*
>
> *b) The appellant submits that the CIT(A)-NFAC is duty bound to pass an order on merit.*
>
> *4. On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not considering the following Grounds of Appeal:*
>
> *a) On facts and circumstances of the case and in law, the AO erred in levying a penalty even before the assessment order was served on the appellant and therefore, no opportunity was provided to the appellant to rebut the allegation. The appellant submits that imposing the penalty without providing an opportunity is bad in law.*

b) On facts and circumstances of the case and in law, the learned Assessing Officer erred in imposing the penalty though, the AO while initiating the penalty has not stated under which limb the penalty has been initiated i.e whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income and therefore, the penalty levied on the basis of notice which is invalid, is bad in law.

c) On facts and circumstances of the case and in law, the learned Assessing Officer erred in Imposing a penalty of Rs.58,48,075 under Section 271(1)(c) of the Act.

d) On facts and circumstances of the case and in law, the learned Assessing Officer erred in imposing penalty though there was no addition was warranted and the matter of appeal against the assessment was pending before the learned CIT (A). The AO ought to have waited till the order is passed by the learned CIT(A).

The AO wrongly imposed the penalty though alleged income did not belong to the appellant. In fact, the whole assessment was wrongly made in the hands of the appellant instead of her mother.

5. The appellant craves leave to add, amend, modify, substitute and/or cancel any of the ground of the appeal."

6. The relevant facts, in so far as they bear upon the controversy, are that an assessment under section 144 of the Act was completed on 17.03.2016, wherein the Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. The appeal against said order was to be filed within 30 days of receipt of the order, but as the record available with the AO, no appeal was preferred against the assessment order. The Assessing Officer, being conscious of limitation for levy of penalty, issued a show-cause notice dated 07.09.2016, which remained non-complied with. Penalty under section 271(1)(c) was accordingly imposed at 100% of the tax sought

to be evaded, quantified at ₹58,48,075/-, vide order dated 28.09.2016.

6.1 Aggrieved, the assessee approached the Commissioner of Income Tax (Appeals). The record shows that the assessee filed multiple appeals: first on 27.04.2017 in electronic form, wherein the penalty order dated 28.09.2016 was specified; second, on 28.04.2017 in physical form, challenging the assessment order dated 17.03.2016. The assessee attributed the confusion to shifting of residence owing to redevelopment of premises, and further pleaded that she was ill-advised by a consultant inexperienced in appellate procedure. It was submitted that both assessment and penalty orders were passed ex parte, and certified copies were obtained belatedly. The assessee further submitted that she received the notice for outstanding demand by the notice server on new premises and then only the assessee realized that order in respect of assessment and penalty had been passed ex-parte. The assessee further submitted that immediately thereafter she collected certified copies of the assessment order as well as the penalty orders but the tax consultant of the assessee was not experienced enough to file an appeal and so she filed one appeal against both the assessment order as well as the penalty order. Thereafter, the assessee met with another tax consultant, who advised the assessee to file a separate appeal against penalty proceeding also. Accordingly, as per his advice, an appeal was filed before the Tribunal on 22.02.2024 i.e. third appeal. On this

premise, the assessee sought condonation of delay in filing a subsequent third appeal, lodged on 22.02.2024, against the penalty order.

6.2 This is the present appeal which has been adjudicated by the Ld. CIT(A) holding the same to be delayed by a period of 2673 days. The Commissioner (Appeals), however, rejected the plea, holding that the delay of 2673 days was inordinate and unexplained, that no 'sufficient cause' had been made out, and that the assessee's casual approach and reliance on alleged misadvice could not constitute justification. Reliance was placed on the settled principle that negligence, inaction, or want of bona fides cannot be construed as sufficient cause. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"2.4 I have carefully considered the submissions made by the assessee and grounds/reasons for 2673 days delay (from 27.10.2016 to22.02.2024) in filing the appeal. The appellant has furnished following reasons for such a delay:*
>
> *(i). She did not receive the copy of the assessment or penalty order as her house was under redevelopment and she had moved to a different premise.*
>
> *(ii). One of the combined appeals for both the assessment and the penalty order was filed on 27-04-2017. However, the same was heard as assessment appeal and is presently in a state of consideration before Ld. CIT(A), after the original appeal order of the Ld. CIT(A) was Set-Aside by the Hon'ble ITAT.*
>
> *(iii). Appellant also filed an appeal exclusively for the assessment on 28-04-2017, which has not yet been heard.*
>
> *The reasons cited by the appellant have been considered, which mainly points out to change in residential address, and wrong advice of tax consultant and CA. Further, the appellant submitted*

the notices/orders were delivered to her old address, hence the same was not unserviceableis not tenable, as can be seen from Col No.2C of the Form 35 that the appellant herself mentioned that the penalty order was passed was received on 28.09.2016, and also for the first time the appeal on referring to such an order was filed long back on 27.04.2017, i.e. around6 years back, from the date of institution of this appeal. Appellant did not take any curative measures even if a defective appeal was filed allegedly in the year 2022. Also, as on date, as per appellant's own assertion there are two appeals pending for the same assessment order passed in her case, and no effort has been shown to be made to even withdraw one of such duplicate appeals. Appellant cannot take advantage of her own casual approach to legal proceedings and seek condonation on the same ground. I do not see any reasonable cause for a delay of 2673 days which can be termed as sufficient cause or any factors beyond the control of the appellant.

2.5 When an appeal is filed beyond the statutory limit, the Appellant needs to provide a valid reason of demonstrate exceptional circumstances for the delay. The appellant must be able to demonstrate that there was sufficient cause" which obstructed his action to file Appeal beyond the prescribed time limit. Thus, the condonation of delay is not automatic but is based upon on the facts of the case.

2.6 The next question arises whether delay was excessive or inordinate. I have considered the submissions and perused the submissions of the appellant. As far as the delay in filing the appeal by 2673 days is concerned, one has to admit that the delay involved is inordinate and not marginal. Personal problems per se could not constitute a reasonable cause, it is settled position of law that it is only marginal delays that can be condoned, and not inordinate delays. A liberal view ought to be taken in terms of delay of few days. However, when there is inordinate delay, one should be very cautious while condoning the delay. The delay of 2673 dayscannot 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 Supreme Court in the case of Ramlal v. RewaCoalfields Ltd., AIR 1962 SC 361 has held that 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, nor 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 present case, the reasons advanced by the appellant do not show any good and sufficient reason to condone the delays. The delays are not properly explained by the appellant. There is no reason for condoning such delay in this case. The delay is nothing but negligence and inaction of the appellant which could have been very well avoided by the exercise of due care and attention. Further the appellant has not shown from record that any efforts were made for filing of the appeal on time. It is the duty of the appellant to file the appeal within the stipulated time provided under the Act unless the appellant is prevented by a reasonable cause from filing of the appeal in time."

7. Before us the Ld. counsel for the assessee however submitted slightly different facts. Ld. counsel for the assessee submitted that in the appeal filed by the assessee on 27.04.2017 in electronic format, the date of the order challenged mentioned was 28.09.2016 i.e. penalty order u/s 271(1)(c) of the Act. Whereas, in the appeal filed in physical format on 28.02.2017, the order challenged mentioned was 17.03.2016 (inadvertently mentioned as 17.03.2017) and thus in the said physical appeal quantum assessment order was challenged. Ld. counsel for the assessee submitted that the appeal of the assessee against the quantum proceedings was upheld by ld. counsel however, on further appeal the Tribunal has restored the matter back to the file of the Ld. CIT(A), and which is still pending for adjudication. He specifically

submitted that second appeal in respect of the 271(1)(c) has not disposed of by Ld. CIT(A). He submitted that in view of the mistake on the part of the tax consultant in filing in both those appeals same grounds of appeal related to the quantum addition, the assessee was advised to file a separate appeal against the order u/s. 271(1)(c) of the Act, which the assessee filed on 22.02.2024 and therefore according to ld. counsel for the assessee the delay of 2673 days in filing the present appeal was on account of the incorrect advice on the part of the consultant who was new and not well versed with the process of filing appeal. The Ld. counsel submitted that assessee should not be penalized for any mistake on the part of the chartered accountant. The Ld. counsel accordingly submitted that the delay in filing the appeal before the Ld. CIT(A) should be condoned. Ld. counsel alternatively submitted that Ld. CIT(A) has not decided the issue on merit and therefore appeal should be sent back to him. He alternatively also submitted that since quantum proceeding has been restored back to the file of the Ld. CIT(A) and therefore this appeal cannot be survived and the matter may be restored back to the file of Ld. CIT(A). The learned counsel for the assessee contended that the appeal filed on 27.04.2017 was, in fact, directed against the penalty order dated 28.09.2016, and therefore the subsequent appeal of 22.02.2024 should not have been rejected as barred by limitation. It was submitted that the earlier appeal was never disposed of, and the confusion arose only because grounds therein referred to the

quantum assessment. It was further urged that an assessee cannot be penalised for mistakes of a tax consultant, and that in any event, in view of the Full Bench judgment of the Bombay High Court in *Mohd. Farhan A. Shaikh v. DCIT* [125 taxmann.com 253 (Bom.)], the penalty was unsustainable ab initio as the notice under section 271(1)(c) read with section 274 of the Act was vague and failed to strike off the irrelevant portion. The Ld. DR on the contrary submitted that the assessee failed to point out any mistake in the order passed by the Ld. CIT(A) and therefore the order of the Ld. CIT(A) should be upheld.

8. We have heard rival submission of the parties and perused the relevant material on record. We find that Ld. CIT(A) has rejected the appeal as unadmitted in view of the failure on the part of assessee in explaining the delay in filing the appeal. Therefore till the appeal is admitted, the issue on merit cannot be decided, thus, the central issue before us is not the merits of the penalty, but whether the assessee's appeal was maintainable or ought to have been entertained at all. From the facts and evidences filed before us, we find that in the case of assessee the assessment order u/s 144 has been passed on 17.03.2016, a copy of which is placed on paper book 8-10. Thereafter penalty u/s 271(1)(c) of the Act has been levied on 28.09.2016. Both orders have been passed ex-parte. The assessee contested that certified copy of those orders were received by the assessee on 23.02.2017 and thereafter the two appeals had been filed by the assessee. The first appeal was on 27.04.2017

which was filed electronically. For ready reference, the relevant form No. 35 of the appeal is reproduced as under:

FORM NO. 35
[*See* rule 45]
Appeal to the Commissioner of Income-tax (Appeals)

CIT(A)

Acknowledgement Number 765138060270417

Personal Information

First Name	Middle Name	Last Name or Name of Entity	PAN	TAN (if availabie)
ARTI	SHAILEN	TOPIWALA	AACPT3505D	

Flat/ Door/ Block No.	Name of Premises / Building / Village	Road / Street / Post Office
101		sv

Area/ Locality	Town/ City/ District	State	Country
santacruz	mumbai	MAHARASHTRA	INDIA

Pincode	Mobile No	STD/ISD Code-Phone No	Email Address	Whether notices/ communication may be sent on email?
400054	- 9820084895	22 - 26614970	kirit_shah55@yahoo.in	Yes

Order against which Appeal is filed

1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant

Assessment Year	Financial Year	Block Period From(AY)	Block Period To(AY)	Date Of Search
2013 - 14				

2 Details of the order appealed against/Appeal u/s 248

a Section and sub-section of the Income-tax Act,1961 — 144

Order Number — 6/P97/16-17

Document Identification Number (DIN)

b Date of Order — 28/09/2016

c Date of service of Order / Notice of Demand / Date of payment of tax in case of Appeal u/s 248 — 28/09/2016

3 Income-tax Authority passing the order appealed against — WARD 25(2)(1), MUMBAI

Pending Appeal

4 Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals) — No

4.1 If reply to 4 is Yes, then give following details.

Sl.No	Commissioner (Appeals), with whom the appeal is pending	Appeal No	Date of Filing of appeal	Assessment year/ financial year in connection with which the appeal has been preferred	Assessment year/ financial year	Income-tax Authority passing the order appealed against	Section and sub-section of the Income-tax Act,1961, under which the order appealed against has been passed	Date of such Order
1								

Appeal Details

5 Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred — 246A

6 If appeal relates to any assessment ? — Yes

a Amount of Income Assessed (in Rs.) — 19537220

b Total Addition to Income (in Rs.) — 18899000

c In case of Loss, total disallowance of Loss in assessment (in Rs.) — 0

d Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.) — 0

e Amount of Disputed Demand (in Rs.)-Enter Nil in case of Loss — 0

7 If appeal relates to penalty ? — Not Applicable

a Amount of penalty as per order (in Rs.)

b Amount of penalty disputed in Appeal (in Rs.)

Details of Taxes paid

8 Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full — No

8.1 If reply to 8 is Yes, then enter details of return and taxes paid

a Acknowledgement number

b Date of filing

c Total tax paid

9 Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid — No

9.1 If reply to 9 is Yes, then enter details

Tax Payments

BSR Code	Date of payment	Serial Number	Amount
Total			0

10 If the appeal relates to any tax deductible under section 195 of the Income-tax Act,1961 and borne by the deductor, details of tax deposited under section 195(1)

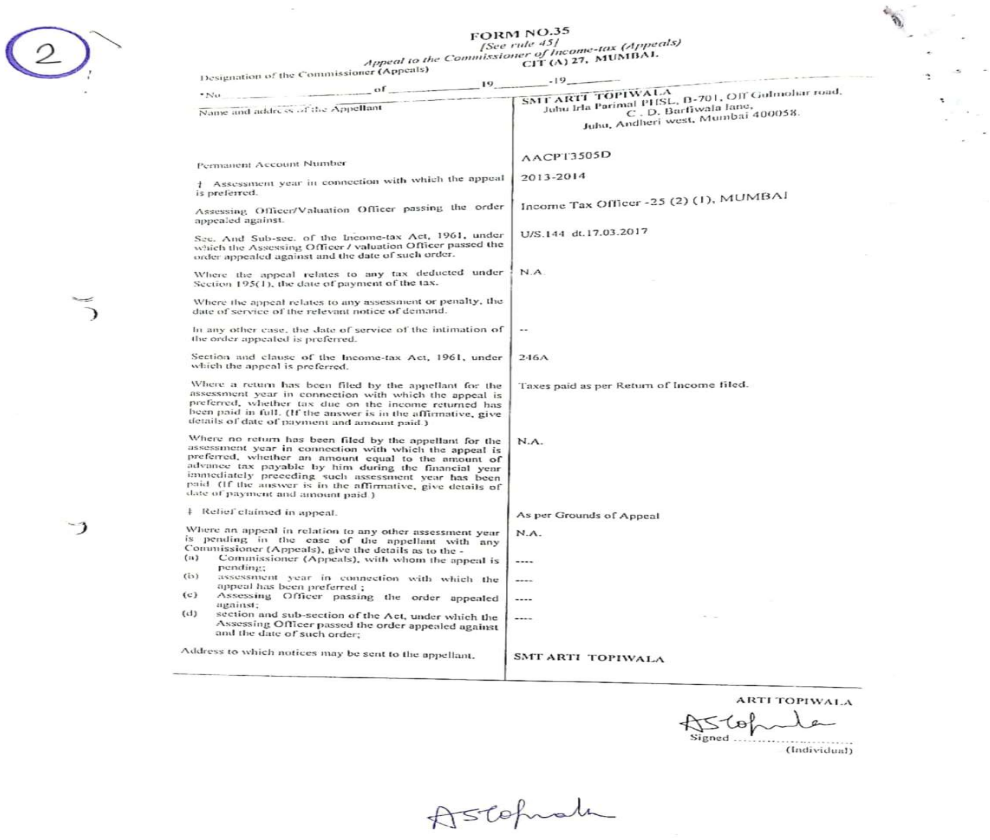
INCOME TAX DEPARTMENT

A S Topiwala

8.1 On perusal of the details of the order against which appeal is filed, we find that date of the order has been mentioned as

28.09.2016. In column for the date of service of order has also mentioned as 28.09.2016. Since the order date 28.09.2016 is in respect of the levy of the penalty u/s 271(1)(c) of the Act, thus appeal filed on 27.04.2017 by the assessee is in respect of penalty order. Thus, the materials before us disclose that the appeal dated 27.04.2017 specifically referred to the penalty order dated 28.09.2016.

8.2. The second appeal has been filed by the assessee on 28.04.2017 which is in physical format and the relevant form No. 35 available on paper book page No. 2 is reproduced as under:



FORM NO.35
[See rule 45]
Appeal to the Commissioner of Income-tax (Appeals)
CIT (A) 27, MUMBAI.

Designation of the Commissioner (Appeals)

*No. _____ of _____ 19____-19____

Name and address of the Appellant	SMT ARTI TOPIWALA Juhu Irla Parimal PHSL, B-701, Off Gulmohar road, C. D. Barfiwala lane, Juhu, Andheri west, Mumbai 400058.
Permanent Account Number	AACPT3505D
1 Assessment year in connection with which the appeal is preferred.	2013-2014
Assessing Officer/Valuation Officer passing the order appealed against.	Income Tax Officer -25 (2) (1), MUMBAI
Sec. And Sub-sec. of the Income-tax Act, 1961, under which the Assessing Officer / valuation Officer passed the order appealed against and the date of such order.	U/S.144 dt.17.03.2017
Where the appeal relates to any tax deducted under Section 195(1), the date of payment of the tax.	N.A.
Where the appeal relates to any assessment or penalty, the date of service of the relevant notice of demand.	
In any other case, the date of service of the intimation of the order appealed is preferred.	--
Section and clause of the Income-tax Act, 1961, under which the appeal is preferred.	246A
Where a return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether tax due on the income returned has been paid in full. (If the answer is in the affirmative, give details of date of payment and amount paid)	Taxes paid as per Return of Income filed.
Where no return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether an amount equal to the amount of advance tax payable by him during the financial year immediately preceding such assessment year has been paid (If the answer is in the affirmative, give details of date of payment and amount paid)	N.A.
4 Relief claimed in appeal.	As per Grounds of Appeal
Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals), give the details as to the -	N.A.
(a) Commissioner (Appeals), with whom the appeal is pending;	----
(b) assessment year in connection with which the appeal has been preferred ;	----
(c) Assessing Officer passing the order appealed against;	----
(d) section and sub-section of the Act, under which the Assessing Officer passed the order appealed against and the date of such order;	----
Address to which notices may be sent to the appellant.	SMT ARTI TOPIWALA

ARTI TOPIWALA
Signed .....
(Individual)

ASTopiwala

8.3. In the this form No. 35 , order challenged has been mentioned as u/s 144 dated 17.03.2016 (sic). The date of 2017 has been inadvertently mentioned whereas order u/s 144 is dated 17.03.2016 and thus, this appeal was against the quantum assessment proceedings.

8.4. But in both the appeals ground raised were in respect of the quantum assessment addition. The appeal against quantum proceeding was upheld by Ld. CIT(A) but on further appeal ITAT has restored the matter back to the file of the Ld. CIT(A), which is still pending for adjudication as stated by the ld Counsel for the assessee.

8.5 Subsequently, on advice of the another tax consultant the assessee filed one more appeal against levy of the penalty of the 271(1)(c) of the Act on 22.02.2024. Evidently, there was delay of 2673 days in filing said appeal and therefore same has been rejected by the Ld. CIT(A). The subsequent appeal dated 22.02.2024 is directed against the same order. It is evident, therefore, that there exist two appeals on the same cause, one of which was probably filed within limitation. The Commissioner (Appeals), while dismissing the later appeal, did not advert to or dispose of the earlier appeal, which remains pending.

9. Now, the question before us arise as to whether the assessee can file two appeals against the same penalty order u/s 271(1)(c) of the Act. The plea of the ld. counsel before us is that the appeal filed by the assessee in 2017 against the penalty has not been adjudicated

and therefore the same has rendered as infructuous and therefore the subsequent appeal filed on 22.02.2024 should be admitted after condoning the delay in filing the appeal. According to the Ld. counsel the chartered accountant failed in filing the appeal in proper format and therefore earlier appeal filed against penalty should be treated as infructuous. Ld. counsel however submitted that no order has been passed by the Ld. CIT(A) in respect of appeal filed earlier in respect of the penalty order.

10. We however do not agree with the contention of the Ld. counsel for the assessee to treat the earlier appeal filed against the penalty order as infructuous unless the assessee shows that said appeal has been dismissed by the Ld. CIT(A). We understand that there was some mistake in raising the grounds but the date of order challenged in appeal was specified as date 28.09.2016, which is the date of the penalty order u/s 271(1)(c) of the Act, therefore there was no confusion as to the said appeal was against quantum order or penalty order and the ground of the quantum addition mistakenly mentioned could be rectified by the assessee. In our considered opinion, once an appeal against the penalty order dated 28.09.2016 was lodged on 27.04.2017 probably within time, the subsequent appeal filed after 2673 days became redundant. The proper course would have been for the Commissioner (Appeals) to take cognizance of the appeal filed on 27.04.2017 , which is probably within limitation, permit rectification of defects in grounds, and adjudicate the matter on merits. The assessee cannot

be left remediless merely because of inadvertent errors in drafting or filing, especially when the statutory remedy was in fact availed in time.

11. The law on condonation of delay is well settled: though courts lean towards a liberal approach where sufficient cause is made out, an inordinate and unexplained delay cannot be condoned as a matter of course. However, where an appeal is demonstrably filed within limitation, the rejection of a subsequent appeal on limitation cannot obliterate the earlier appeal. The interest of substantial justice requires that both appeals be placed before the Commissioner (Appeals), one to be treated as infructuous, and the other to be adjudicated on merits.

12. Accordingly, the impugned order of the Commissioner (Appeals) is set aside. The matter is remitted to his file with a direction to consider both appeals together, treating the appeal of 22.02.2024 as redundant, and to dispose of the appeal of 27.04.2017, examining whether it was within limitation and then if required, on its merits in accordance with law. Needless to say, all contentions of the parties, including the plea of defective notice under section 274 as raised before us, shall remain open for adjudication.

13. Ground No. 2 raised in the appeal is allowed for statistical purposes. Other grounds of the appeal are not adjudicated being academic at present.

14. In the result both the appeals of the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 26/08/2025.

Sd/-	**Sd/-**
(SANDEEP GOSAIN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/08/2025
Disha Raut, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai