

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri Pawan Singh (JM) & Shri Omkareshwar Chidara (AM)

ITA No. 793/MUM/2025 (Assessment Year : 2017-18)

Bombay Oxygen Investments Ltd. 22/B, Mittal Tower, 210 Nariman Point Mumbai-400 021. PAN : AAACB1753A Appellant	Vs.	DCIT-15(1)(2) Aayakar Bhavan M.K. Road Mumbai-40 0020. Respondent
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Assessee by	:	Shri Ronak Doshi
Revenue by	:	Shri Satyaprakash R. Singh
Date of Hearing	:	10/06/2025
Date of pronouncement	:	29/08/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

In this above cited appeal, the only issue to be adjudicated is whether the disallowance made by appellant under section 14A of the I.T. Act is reasonable or not.

2. Before going into the merits of the case, whether the appeal filed with a delay of 720 days, is to be admitted or not, is to be decided. During the hearing before the ITAT, an Affidavit was filed which was signed by Mrs. Sheela H. Pillai, CFO of the Company, wherein it was stated that earlier CFO who was handling the tax matters passed away on 8.3.2022. The Ld. CIT(A) passed an appeal order on 16.12.2022 giving part relief to the appellant based on the Special Bench decision of Vireet Investments (P) Ltd. (82 taxman.com 415)(Del Trib)(SB) on the issue relating to section 14A of the Act disallowance. The present CFO says it took some time to understand the issues, finding old documents and also for some period, the present CFO also fell sick, due to oversight some delay and operations of company was truncated etc., appeal hence could not be filed in time. Then, recently, they approached a tax consultant, who suggested them to file an appeal and hence they filed an appeal with a delay of 720 days, it was mentioned. In the

petition for condonation of delay in filing of an appeal, the appellant relied on the decision of Hon'ble Apex Court, Collector of Land Revenue Vs. Mrs. Katzi & Others (167 ITR 471)(SC). The Ld. AR of the appellant also argued on almost similar lines and requested for condonation of delay.

3. Per contra, Ld. DR of Revenue, has opposed the plea and filed written submission which is reproduced below :-

“1. Background of the Case

The present appeal has been filed by the assessee, Bombay Oxygen Investments Ltd., before the Hon'ble Income Tax Appellate Tribunal challenging the order passed under Section 250 by the CIT(A), Mumbai, for AY 2017-18. The assessee has raised two primary issues: first, an application for condonation of delay of 720 days in filing the appeal before the Hon'ble IT AT, and second, contesting the disallowance of Rs. 53,21,785 under Section 14A r.w. Rule 8D of the Income Tax Rules, 1962. The CIT(A) had partly upheld the disallowance and restricted the same to Rs. 33,87,420 in addition to the assessee's own disallowance of Rs. 19,34,365. The assessee now seeks full deletion of the disallowance in excess of the suo motu amount.

2. ON CONDONATION OF DELAY

2.1 Assessee's Ground on Condonation of Delay

The assessee, in its application for condonation of delay, states that the impugned order under Section 250 was served on 9 May 2024. However, the appeal before the Hon'ble ITAT was filed only on 24 December 2024, resulting in a delay of 720 days. In its affidavit, the assessee claims that the delay was attributable to the inadvertent misplacement of the appellate file and internal procedural lapses during the COVID-impacted work structure. The assessee contends that the delay was unintentional and prays for leniency, citing sufficient cause and a longstanding clean compliance record.

2.2 Revenue objection to condonation of Delay

The Revenue most respectfully objects the assessee's application for condonation of delay in filing the appeal. It is submitted that the reasons advanced by the assessee do not constitute "sufficient cause" within the meaning of Section 253(5) of the Income Tax Act, 1961, and fail to satisfy the standards laid down by judicial precedent. As per the affidavit submitted by the Chief Financial Officer (CFO), the delay of 720 days (wrongly mentioned as 229 days) days is attributed to the time taken to ascertain and verify the basis of the original suo motu disallowance made under Section 14A in the return of income. The CFO has stated that internal efforts were required to understand and retrace the working of the Rs. 19.34 lakh disallowance, which was earlier offered voluntarily. However, the explanation provided is broad, unsupported by any

contemporaneous records or correspondence, and fails to furnish a day-wise account of actions taken during the prolonged delay period.

II. In this regard, reliance is placed on the binding precedent of the Hon'ble ITAT Jaipur Bench in *KGNNMW Educational Research & Analysis Society v. ITO* [2015] 54 taxmann.com 329 (Jaipur-Trib.), where it was held that a delay of 347 days was uncondonable in the absence of concrete evidence and specific justification. The Tribunal observed that vague affidavits, generalised claims, and absence of supporting records are not sufficient to establish bona fide conduct. Similar shortcomings exist in the present case. It is also significant that the assessee, being a listed investment company with established corporate procedures and experienced tax personnel, did not seek timely legal or professional assistance or initiate any documented internal escalation during the prolonged delay period.

III. Furthermore, in *H.H. Brij Indar Singh v. Lala Kanshi Ram* [(1917) 19 BOMLR 866], the Hon'ble Privy Council clarified that the exercise of judicial discretion for condonation must be guided by caution and applied only when the conduct of the litigant is marked by reasonable diligence and timely action. The assessee's failure to act within a reasonable timeframe and the absence of any documentary evidence to support the claimed circumstances indicate a lack of such diligence. The onus to explain the delay lies squarely upon the appellant, and in this case, that onus remains undischarged.

IV. Accordingly, the Revenue submits that the application for condonation is devoid of merit, and the delay in filing the appeal deserves to be rejected in accordance with law.

4. After hearing both sides, it is decided not to condone the delay of filing an appeal before ITAT for the following reasons :

Now, the facts are to be analysed as to really whether the death of CFO caused the delay in filing the appeal. The Ld.AR of the appellant filed an appeal before the ITAT in similar circumstances for A.Y. 2018-19. If the death of CFO is the valid reason, they would not have filed an appeal to ITAT for A.Y. 2018-19, in time. Secondly, the company had been filing appeals to Ld. CIT(A), filing Returns of Income, filing TDS Returns, paying advance tax, if any, in time. When there is no inordinate delay for complying with all these Income Tax related issues, despite the death of CFO, it cannot be accepted that the CFO's death caused delay of 720 days in filing of appeal. Thirdly, several reasons like CFO's death, present CFO's sickness, Covid- related work impacted, oversight, company's operations got truncated etc. were

mentioned reasons for delay for filing appeals. These reasons are very vague and general especially when all other operations relating to Income Tax are being attended to in time, it is beyond human probability theory proposed by Hon'ble Supreme Court in the case of Sumati Dayal, to accept the contentions of appellant and hence the inordinate delay of 720 days is not condoned and appeal cannot be entertained. The reliance placed by Ld. AR of the appellant on the decision of Hon'ble Supreme Court in the case of Collector of Land Revenue Vs. Mrs. Katzi (167 ITR 471)(SC) is out of context. The decision of Hon'ble Supreme Court should be understood in proper perspective after taking into consideration the relevant facts of that case. The delay was condoned by Hon'ble Supreme Court in that case because "State" is the appellant in that case and the observations of Hon'ble Apex Court are worth reproduction:-

"Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the Judgement sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the back ethos, delay on its part is less difficult to understand though more difficult to approve. In any event the "State" which represents the collective cause of the community, does not deserve a litigant non grata statue."

5. Thus, the decision was rendered in the context of delay by "State" represented by bureaucracy which was inherited from Britishers. But, in the impugned case, the delay in filing of appeal, we are dealing with is a company which has got a barrage of expert staff who are filing Returns of Income, TDS returns, paying of advance tax were looked after and completed in time. Moreover, the appeal for A.Y. 2018-19 subsequent year was filed with a small delay of 3 months. If all the reasons mentioned in the affidavit of CFO are correct, then appellant company should have filed appeal for A.Y. 2018-19 also with inordinate delay, which is not the case.

6. In view of the above detailed discussion the delay in filing the appeal is not condoned and hence the appeal of appellant is dismissed as not maintainable.

Order pronounced in the open Court on 29/08/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai