

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 596/SRT/2025  
Assessment Year: 2017-2018**

Sandipkumar Manubhai Patel,  
B-42, Sneh Milan Society,  
Chikvadi Nana Varachha,  
Surat-395006.

**PAN NO. BFBPP 1199 C  
Appellant**

**Vs.**

Income-tax Department Ward  
1(1),  
Income-tax Office, Hari Kunj,  
Station Road,  
Bharuch-356069.

**Respondent**

Assessee by : Mr. Sapnesh Sheth, Advocate  
Revenue by : Ms. Namita Patel, Sr. DR

Date of Hearing : 06/10/2025  
Date of pronouncement : 07/10/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 20.10.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2017-2018, raising following grounds:

1. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in passing ex-parte order without giving reasonable opportunity of hearing to assessee.*
2. *On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income*



*Tax (Appeals), NFAC has erred in confirming the action of assessing officer in making addition of Rs. 11,00,000/- as unexplained money u/s 69A of the IT Act, 1961.*

- 3. On the facts and circumstances of the case as well as law on the subject, the learned A.O has erred in invoking provisions of section 115BBE of the Act and in thereby taxing entire unexplained cash credit at 60 percentage and levying surcharge at 25 percentage which is not applicable on above amount.*
- 4. It is therefore prayed that above addition made by assessing officer and confirmed by the learned Commissioner of Income Tax (Appeals), NFAC may please be deleted*

2. At the threshold, the Ld. Counsel for the assessee submitted that there was a delay of 509 days in filing the present appeal before the Tribunal. In support of the application for condonation of delay, the assessee has filed a duly sworn affidavit explaining the circumstances that led to such delay. The relevant extract from the said affidavit reads as under:

*“2. In this regard, it is respectfully submitted that the NFAC, Delhi passed an order dated 20.10.2023. However, I did not receive the physical copy of the said order. Moreover, I do not check my email or the Income Tax portal on a regular basis, and therefore, I was completely unaware of the said order having been passed in my case. It is also pertinent to mention that neither the notice of hearing nor the appellate order was sent to the email address mentioned in Form 35, which belongs to my counsel. As a result, I was unaware of the proceedings and the appellate order. I became aware of the impugned order only when I enquired with my counsel regarding the status of the appeal filed in my case. Upon checking the portal, my counsel discovered that an order has already been passed by the NFAC, Delhi. He immediately downloaded the said order and advised me to file an appeal against it at the earliest. Accordingly, this appeal is being filed before the Honorable Tribunal without any further delay. My counsel has also advised me to submit a request for condonation of delay in filing the appeal, in view of the above bona fide circumstances.”*



3. The Ld. Counsel for the assessee further submitted that the notices of hearing during the first appellate proceedings were not sent to the e-mail address provided in Form No. 35, which was *officework\_13@yahoo.co.in*. Instead, the notices were issued at *sandipmpatel@knpatel.in*, an address unrelated to the assessee's authorized representative. Consequently, neither the hearing notices nor the appellate order were ever received by the assessee, and the delay in filing the appeal occurred for reasons entirely beyond his control.

3.1. The Ld. Departmental Representative, while supporting the impugned order, did not seriously dispute the factual aspect relating to incorrect communication of notices.

3.2. We have given our anxious consideration to the rival submissions and perused the affidavit, material placed on record, and the impugned appellate order. The issue before us is whether, in the facts of the case, the delay of 509 days in filing the appeal deserves to be condoned.

3.3. The expression “**sufficient cause**” employed in section 253(5) of the Income-tax Act, 1961, has been liberally interpreted by the Hon'ble Supreme Court in a catena of judgments, including *Collector, Land Acquisition v. Mst. Katiji & Others* [(1987) 167 ITR 471 (SC)], The consistent view of the Hon'ble Apex Court is that the rules of limitation are founded on public policy to ensure diligence and finality but are not meant to defeat the cause of substantial justice. Where the delay is neither



deliberate nor mala fide, but occasioned by bona fide circumstances beyond the control of the litigant, a liberal and pragmatic approach is warranted.

3.4. Applying the above principle to the facts before us, we note that the assessee has furnished a reasonable and credible explanation for the delay. The non-receipt of notice and order due to the use of an incorrect e-mail address by the NFAC is a valid and sufficient cause preventing the assessee from filing the appeal within time. The explanation is supported by a sworn affidavit and has not been controverted by the Revenue. The conduct of the assessee, upon discovery of the order, in immediately approaching the Tribunal, further fortifies the bona fides of his claim.

3.5. Having regard to the totality of circumstances, we are satisfied that the assessee was prevented by sufficient cause from filing the appeal within the prescribed period. In the interests of substantial justice and following the dictum of the Hon'ble Supreme Court in *Collector, Land Acquisition* (supra), the delay of 509 days stands condoned. The appeal is accordingly admitted for adjudication on merits.

**4.** Turning now to the merits, we find from the record that during the appellate proceedings before the Ld. CIT(A), the assessee could not file submissions or evidences in support of his claim owing to the same communication lapse which has formed the basis of the condonation application. The Ld. CIT(A), therefore,



proceeded to dispose of the appeal *ex-parte*, without the benefit of any effective representation from the assessee's side.

4.1. In our considered opinion, the principles of natural justice and fair play demand that no party should be condemned unheard. In the present case, the failure to serve hearing notices at the correct address has deprived the assessee of an opportunity to present his case. We are, therefore, of the considered view that this is a fit case for restoration of the matter to the file of the Ld. CIT(A) to afford the assessee one more opportunity to substantiate his claim with relevant materials.

4.2. Accordingly, in the interest of justice, we set aside the impugned order of the Ld. CIT(A) and restore the matter to his file with a direction to decide the appeal afresh, after affording adequate opportunity to the assessee to file submissions and evidences in support of his case. The Ld. CIT(A) shall pass a speaking and reasoned order in accordance with law.

4.3 In the result, the delay in filing the appeal is condoned. The impugned order of the Ld. CIT(A) is set aside, and the matter is restored to his file for fresh adjudication in accordance with law after affording due opportunity of hearing to the assessee. Ground No. 1 of the assessee's appeal is allowed for statistical purposes, and the remaining grounds are rendered academic at this stage.



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

**Order pronounced in the open Court on 07/10/2025.**

**Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Surat;

Dated: 07/10/2025

Rahul Sharma, Sr. P.S. (on Tour)

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Surat**