

**IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**I.T.A. No. 280/SRT/2025
Assessment Year: 2008-09**

Brijwasi Developers Pvt Ltd 102, Platinum Apartment, Parle point, Gokul row House, Surat – 395007. PAN – AACCB6546R	Vs	ACIT, Circle – 1(1)(1) New Civil Hospital, Near Desai CNG Gas Stn, mujra Gate, Surat - 395001
(Appellant)		(Respondent)

Assessee by	Sh. Rajesh Shah, CA
Revenue by	Shri Mukesh Jain, CIT(DR)

Date of Hearing	06.10.2025
Date of Pronouncement	09.10.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 25.08.2025 passed under section 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2008-09.

2. At the very outset, we noticed that there is delay of 855 days in filing present appeal and in this regard an affidavit for seeking condonation of delay has been filed by the assessee, wherein it has been mentioned as under:

1. That the Ld. CIT(A) passed the order for A.Y. 2008-09 on 25.08.2022, accordingly we were required to file appeal before Honourable Tribunal on or before 25.10.2022 on the basis of date of order. The appeal were actually filed on 04.03.2025 causing the delay of 862 days.

2) That in the Form No. 35 the email ID mentioned was casschaudhary@yahoo.com. While filing Form No. 35, the assessee specifically opted 'no' for sending notices/communication on the said email ID. Further, in clause no. 17 of the Form-35 "Address to which notices may be sent to the appellant" assessee mentioned the address "102 Platinum Apartment, Parle Point, Gokul Row House, Surat". When assessee opted 'no' for sending notice through email, even the appellate order should have been served physically at the said address. Assessee neither received notices nor the appellate order physically and hence the assessee was completely unaware of the appellate proceedings as assessee expected physical delivery of the notices and order passed by CIT(A).

3) For this reason the assessee also didn't comply with the notices issued by Ld. CIT(A) and the order was passed ex-parte by Ld. CIT(A).

4) That the assessee came to know about the order when assessee received recovery notice for outstanding demand dated 24.12.2024. Subsequently, the assessee logged into ITD portal and downloaded the order for the purpose of filing the appeal before Honourable Tribunal. Assessee, thereafter, consulted senior CA Shri Rasesh Shah after passing of the due date for filing the appeal. Hence the appeal was filed belatedly which occurred as assessee didn't receive the order physically which was downloaded from the ITBA portal subsequently.

5) That infact there is no delay in filing of appeal if the date of downloading the order is considered to be the date of the service. If the delay is construed on the basis of date of order, the delay in filing the appeal was not intentional and assessee was prevented by sufficient and reasonable cause for not filing the appeal in time.

6) I beg to condone the delay in filing the appeal before Honorable Tribunal.

7) I submit that the case is a meritorious one and requires consideration.

3. On the other hand Ld. DR refuted the contents contained in the application and requested for dismissal of the same.

4. 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 & Ors., [1987] AIR 1353 (SC)**, 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 the Tribunal. Therefore we condone the delay and admit the appeal to be heard on merits.

5. we also noticed that assessee was *ex-parte* before Ld. CIT(A). In this regard Ld. AR explained the circumstances before the bench that there was '*sufficient cause*' which prevented the assessee to represent properly before Ld.

CIT(A). On the other hand DR relied upon the orders passed by the revenue authorities.

6. Be that as it may, without going into the merits of the issues raised by the assessee and considering the fact that there was reasonable cause, because of which assessee could not put effective representation before Ld. CIT(A). Hence the Bench is of the view that one more opportunity be given to the assessee to represent his case before Ld. CIT(A). Therefore considering the overall circumstances of the present case, we deem it proper to restore the matter back to the file of Ld. CIT(A) for deciding the appeal afresh by providing one more opportunity to the assessee

7. Before parting, we make it clear that our decision to restore the matter back to the file of the Ld. CIT(A) shall in no way be construed as having any reflection or expression on the merits of the dispute which shall be adjudicated by the Ld. CIT(A) independently in accordance with law.

8. In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09/10/2025

Sd/-

Sd/-

OM PRAKASH KANT
ACCOUNTANT MEMBER

SANDEEP GOSAIN
JUDICIAL MEMBER

Surat:

Dated: 09/10/2025

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Surat