

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

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

**I.T.A. No. 82 & 83/SRT/2025
Assessment Year: 2016-17**

Ashvinbhai Laxmanbhai Karkar 14, Sangana Raw House, Part -A-1, Near Shyamdharm Society, Pune Simada Road, Surat - 395010 PAN - AMAPK6835H	Vs	ITO – 2(3)(1) Aayakar Bhavan, Majura Gate, Surat – 395001.
(Appellant)		(Respondent)

Assessee by	Shree PM Jagasheth, CA
Revenue by	Ms. Namita Patel, Sr. DR

Date of Hearing	07.10.2025
Date of Pronouncement	09.10.2025

ORDER

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

The present appeals have been filed by the assessee challenging the impugned order dt. 08.11.2023 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 2016-17.

2. Since all the issues involved in these two appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for

the sake of convenience and brevity. we shall take ITA No. **82/SRT/2025, A.Y 2016-17** as lead case and facts narrated therein.

3. At the very outset, we noticed that there is delay of 655 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:

Ashvinbhai Laxmanbhai Karkar, aged about 49 years old, 18, Sangana Raw House, Part- A/1, Near Shyamdham Society, Kumbhaira B.O., Puna, Surat-395010, Gujarat do hereby solemnly affirm and declared as under.

1. That during the course of the assessment proceedings for A.Y. 2016-17, all notices, show notices, and orders were issued and served to the email ID: jodhani.ashok@gmail.com, which belonged to my previous consultant who was handling my Income Tax Return filing work at the time. However, he did not check his email and did not inform me about the proceedings and also not forward or share with me any of the notices issued during the assessment and penalty proceedings under Section 271(1)(c) of the Income Tax Act, 1961. No physical notices were served to me either, and hence I could not comply with the requirements during the assessment and penalty proceedings.

2. When I knew about the assessment and penalty order with demand. I had disputed with my old consultant, because he had not taken care of my income tax matter, I had changed my consultant and appointed new Consultant for further proceedings, appointed a new consultant for further proceedings. Thereafter, I filed both appeals through my new consultant on 30.10.2023 against the Assessment Order under Section 144 and the Penalty Order under Section 271(1)(c) of the Income Tax Act, 1961. Consequently, my appeals before the Hon'ble CIT(A), NFAC, Delhi were delayed.

3. During the course of the first appellate proceedings, the email ID of my previous consultant (jodhani. Ashok 0679 @ gmail. com) was inadvertently selected by default at the time of filing the appeal. Accordingly, the CIT(A)'s order was served to the same email ID. Due to the prior dispute with my old consultant, he did not inform me about the CIT(A)'s order, and I remained unaware of the same.

4. Later, when I visited the office of my Authorized Representative (AR) to check the status of my appeal, we accessed the Income Tax Portal under the e-Proceedings tab and found that the Ld. CIT(A) had passed ex-parte orders without granting me any opportunity to provide an explanation. The orders had already been uploaded on the portal. We immediately downloaded the orders and filed both appeals before the Hon'ble ITAT, Surat Bench on 24.01.2025. Thus, my appeals were delayed by 383 days, which occurred due to circumstances entirely beyond my control. I respectfully submit that the delay was neither deliberate nor intentional.

5. I, therefore, humbly request Your Honour to kindly condone the delay in the interest of justice and equity, and to set aside the impugned orders, restoring the matters to the file of the Assessing Officer (AO) for fresh adjudication after affording me an adequate opportunity to make submissions and provide explanations.

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

5. 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 the Tribunal. Therefore we condone the delay and admit the appeal to be heard on merits.

6. From the records, we noticed that assessee was ex-parte before Ld. CIT(A), in this regard assessee has relied upon the same affidavit and the facts.

7. Since the reasons mentioned by the assessee are same as were mentioned by him in detailed affidavit for seeking condonation of delay, since after considering the said circumstances we have already condoned the delay in filing the appeal before us therefore the same findings are applicable on account of non appearance of the assessee before AO and Ld. CIT(A) as well.

8. 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 the revenue authorities. Hence the Bench is of the view that one more opportunity be given to the assessee to represent his case before Ld. AO. Therefore considering the overall circumstances of the present case, we deem it proper to restore the matter back to the file of AO for deciding the same afresh by providing one more opportunity to the assessee. The assessee shall not seek any adjournment on frivolous grounds and shall remain cooperative during the course of proceedings.

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

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

ITA No. 83/SRT/2025 AY 2016-17

11. as the facts and circumstances in this appeal are identical to ITA No. 82/SRT/2025 for the AY 2016-17 (except variance in figures) would apply '**mutatis mutandis**' for this appeal also. Accordingly, the grounds of appeal of the assessee are allowed for statistical purpose.

12. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

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

Sd/-

OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-

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