



**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH "DB", ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER AND  
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA No.139/ALLD/2025  
Assessment Year: 2015-16

<b>Jiyauddin Khan</b> Bhitauli Bazar, Maharjganj, Maharajganj-273302.	v.	<b>ITO-1(4)</b> Aayakar Bhawan, Maharajganj, Maharajganj-273301.
<b>PAN:BAFPK3621P</b>		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri A. K. Singh, Sr. DR
Date of hearing:	24   09   2025
Date of pronouncement:	30   09   2025

**ORDER**

**PER SUBHASH MALGURIA, J.M.:**

This appeal has been filed by the assessee against the order of the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi dated 29.01.2025 for the assessment year 2015-16. The grounds of appeal of the assessee are as under: -

- “1. Because on the facts and circumstances of the case, the order of the learned CIT-A is erroneous and not tenable in law and on facts.*
- 2. Because on the facts and circumstances of the case, the learned CIT(A) erred in law and on facts in dismissing the appeal in limine without providing adequate opportunity of being heard, which is in violation of the principles of natural justice.*
- 3. Because on the facts and circumstances of the case, the learned CIT(A) failed to consider the written request made by the appellant seeking extended date of the hearing and thereby wrongly proceeded to decide the appeal ex parte.*
- 4. Because on the facts and circumstances of the case, the order passed by the CIT(A) is arbitrary, unjustified and bad in law, having been passed without considering the submissions and merits of the case.*

5. *Because on the facts and circumstances of the case, That the appellant had reasonable cause for non-appearance on the scheduled hearing date, which was duly communicated to the CIT(A) office through a written request seeking extension of date of hearing.*

6. *Because on the facts and circumstances of the case, the appellant prays for restoration of the appeal before the CIT(A) for fresh adjudication after granting an adequate opportunity of hearing*

7. *Because the appellant reserve the right to alter, modify or take any additional ground of appeal during the course of hearing of appeal.*

8. *Because the order appealed against is contrary to facts, law and principles of natural justice.”*

2. The appeal is barred by limitation by 117 days. The assessee has filed an application seeking condonation of delay in filing of this appeal. The application for condonation of delay is supported by an affidavit of the assessee. The Ld. Sr. Departmental Representative for Revenue did not express any objection to the delay being condoned. Therefore, the delay in filing of this appeal is condoned and the appeal is admitted for decision on merits.

3. In this case, assessment order dated 16.03.2023 was passed by the Assessing Officer under section 147 read with section 144 read with section 144B of the Income Tax Act, 1961 (“Act”, for short) whereby the assessee’s total income was assessed at Rs.56,11,070/-. In the assessment order, the Assessing Officer made an addition of Rs.56,11,070/- was made on account of unexplained cash deposit in the bank u/s 69A of the Act. The assessment order was passed ex-parte qua the assessee. Vide impugned appellate order dated 29.01.2025, the assessee’s appeal was dismissed by the learned CIT(A). The learned CIT(A) did not decide the assessee’s appeal on merits. The assessee’s appeal was dismissed by learned CIT(A) on grounds of limitation. The assessee had requested for

condonation of delay however, the request of the assessee for condonation of delay was not considered favourably by the learned CIT(A) and the assessee's appeal was dismissed treating the same as inadmissible on grounds of limitation. Aggrieved, the assessee has filed the present appeal in Income Tax Appellate Tribunal.

4. At the time of hearing, no one attended the proceedings on behalf of the assessee. The appeal was taken up for hearing in the absence of the assessee and is being disposed of on the basis of the material available on record.

5. On the other hand, the Ld. Departmental Representative (DR) supported the orders of the lower authorities.

6. Heard, the Ld. Representatives of the parties and perused the material available on record. We find that the Ld. CIT(A) vide his order dated 29.01.2025 has dismissed the appeal of the assessee by observing as under:-

*"2.1 As mentioned at the outset, against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act dated 16.03.2023, the appellant filed an appeal vide Form No.35 dated 26.11.2023, resulting in a delay of approximately 7 and half months in filing appeal. In Column No. 2(c), the appellant has mentioned the date of service of the assessment order u/s 147 r.w.s. 144B as 16.03.2023. The appeal should have been filed within 30 days i.e. by 15.04.2023 from service of Order / Notice of Demand as per Section 249(2) of the Act. According to the date of service of Order/Notice of Demand, the appeal is delayed by approx. 7 and half months. In column no. 14 of Form No. 35, the appellant has stated that there is delay in filing of appeal.*

*2.2 The appellant has taken plea that there was dispute in the family, therefore, the appeal was not filed on time. The appellant has not furnished any evidence and day wise explanation for delay in filing of appeal. That there was a family dispute cannot be the plausible reason for delay in filing of appeal.*

*2.3 There is a statutory limit prescribed for filing of appeal in the Act. The invocation of the power to condone any delay, major or minor, in observing such time limit is possible only on the satisfaction of the CIT (Appeal) regarding the appellant having been' unable to file the appeal in time due*

to sufficient cause. The appellant cannot be entitled to automatic admission of appeal filed after the time limit.

2.4 In the instant case, the issue of the merits of the addition/s made by the AO and the grounds of appeal raised by the appellant could be taken up only when this first stage of delay was addressed.

2.5 In the case of *Ajay Dabra vs Pyare Ram* dated 31 January, 2023, Hon'ble Supreme Court has held that -

“What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The appellant who seeks condonation of delay therefore must explain the delay of each day. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay. In the present case, this delay has not been explained to the satisfaction of the court...In the case of *Mahant Bikram Dass Chela versus Financial Commissioner, Revenue, Punjab, Chandigarh and Others (SC)* has held “Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay..... This Court in the case of *Basawaraj and Another versus Special Land Acquisition Officer (SC)* while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows: “The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time, condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.”

2.6 The Hon'ble Supreme Court in *Esha \_ Bhattacharjee v. Managing Committee of Raghunathpur, Nafar Academy 2013 (5) CTC 547* dated 13.09.2013 has deprecated the practice of showing leniency in condoning delays. Some observations emerging from the Order wherein the Hon'ble Supreme Court has culled out certain broad principles with regard to condonation of delay are that — The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

*An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-chalant manner requires to be curbed, of course, within legal parameters...'*

*2.7. In Inderchand D. Kochar v. Assistant Commissioner of Income-tax, Central Circle-1(2), Chennai(2016] 73 taxmann.com 96 (Madras) the Hon'ble Chennai High Court held that 'the Tribunal held that in granting the indulgence and condoning the delay it must be proved beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which was beyond the control of the party invoking the aid of the provision ...*

*Due diligence and caution are the essential requirements. Due diligence cannot be measured by any absolute standard and it depends on relative facts of a particular case. Due diligence is a measure of prudence by the litigant, who is expected to be reasonable and prudent, under the particular circumstances.'*

*2.8 The Hon'ble Supreme Court in the case of Chief Postmaster General and Others vs. Living Media India Ltd. 5 ITA No. 3555/Del/2009 AY 2002-03 and another (2012) 348 ITR 7 (SC) and in the case of Pundlik Jalam Patil (dead) by LRS vs. Executive Engineer, Jalgaon Medium Project (2008) 17 SCC 448 had held that when the conduct of the assessee and facts of the case clearly show the neglect of its own right in preferring appeals, then it is not expected from the judicial and quasi-judicial authorities to inquire into belated and stale claims on the ground of equity.*

*2.9 In Vedabai @ Vijayanatabai Baburao ... vs Shantaram Baburao Patil and Ors on 20 July, 2001, the Hon'ble Apex Court held that - What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.*

*The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance.*

*2.10 This was reiterated by the Hon'ble Court in its judgment in Esha Bhattacharjee v. Managing Academy 2013 (5) CTC 547 (supra).*

*2.11 In view of the facts as discussed hereinabove and the judicial decisions on the matter of delay in filing appeals, this appeal is not admitted for adjudication as it is delayed and not filed within the time limit provided and neither has the delay been acknowledged nor has any plausible reason been provided by the appellant by way of sufficient cause for the delay, despite being asked to.*

3. *In the result, the appeal is dismissed as not admitted.*”

7. From the above findings, it transpires that Id. CIT (A) has observed that assessee has not furnished the plausible explanation for delay in filing of appeal, accordingly, the appeal was dismissed. Now the question is whether the action of Ld. CIT(A) is justified under facts and circumstances of the present case. The Ld. CIT(A) failed to consider the fundamental aspect of the matter. He needed to find out whether any injustice would cause for not condoning the delay. In our considered view that it was not a deliberate attempt by the assessee for gaining any benefit. The Ld. CIT(A) ought to have verified about the correctness of the contention of the assessee, it was prevented by “*sufficient cause*”. Moreover, the assessee would have no advantage of any kind. The Hon'ble Supreme Court in the case of Collector of Land Acquisition Vs. MST. Katiji & Ors 167 ITR 471 (SC) held that “*this court in advocating the liberal approach in condoning the delay for “sufficient cause” held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day’s delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical consideration and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of “sufficient cause” for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrase ‘liberal approach’, justice oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat*

*the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act.”*, Further, the Hon'ble Apex Court in the case of Special Leave Petition (Civil) No.31248 of 2018 has reiterated the principle granting condonation of delay by observing as under: -

*“13. It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.”*

8. In the light of above, under the facts of the present case, we deem it fit and proper and to sub-serve the interest of principles of natural justice to set aside the impugned order and restore the grounds of the appeal to the Ld. CIT(A) for deciding the grounds afresh and by giving clear finding on the grounds raised by the assessee by way of speaking order. Needless to say that the assessee would provide all the information which is relevant and necessary for adjudication of grounds of appeal. Grounds raised in this appeal are allowed for statistical purpose.

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

Order was pronounced in open court on 30/09/2025

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

Sd/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

DATED: 30/09/2025

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

//True Copy//

Assistant Registrar