

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.418 & 388/RJT/2025

निर्धारणवर्ष /Assessment Year: 2009-10

Shri Bhavarsinh Anesinh Rajpput Survey No. 188, House No. 175/176 Meghpar, Anjar, Gujarat-370110 (Gujarat) PAN : APEPR3624N	बनाम Vs.	Income Tax Officer, Ward-1, Gandhidham
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Kapil Sanghavi, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 13/10/2025

घोषणा की तारीख/Date of Pronouncement : 15/10/2025

ORDER

Per, Bench:

Captioned two appeals filed by the assessee, pertaining to Assessment Year (AY) 2009-10 are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi[in short 'Ld.CIT(A)/NFAC'], under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), dated 29.09.2022, which in turn arise out of separate orders passed by the Assessing Officer u/s 144 and 271(1)(c) of the Act.



2. The assessee's appeal in ITA No. 388/RJT/2025 relates to quantum appeal wherein Ld. CIT(A) passed the ex-parte order, as none appeared during appellate proceedings. The assessee's appeal in ITA No. 418/RJT/2025 relates to Penalty proceedings u/s 271(1)(c) of the Act. Both these appeals pertain to Assessment Year 2009-10.

3. Both these appeals filed by the assessee are barred by limitation by 923 days. The assessee moved a petition for condonation of delay requesting the Bench to condone the delay. The contents of the petition for condonation of delay are similar and identical in both appeals. The Ld Counsel for the assessee explained the reasons of delay in both these appeals stating that Hon'ble Commissioner of Income Tax (Appeals), NFAC had passed order u/s 250 for A.Y. 2009-10 on 29/09/2022 confirming penalty u/s. 271(1)(C) levied by Ld AO. However, the appeal against the same is not filed before Tribunal within the prescribed time limit and leading to delay in filing by 923 days.

3.1. The chronology of events occurred is as under:

Date of CIT(A)'s order	29/09/2022
Date of Communication of CIT(A)'s order	29/09/2022
Date upto which appeal should be filed	27/11/2022
Date of filing appeal by assessee	07/06/2025
Delay (in days)	923

3.2. The Ld. Counsel for the assessee submitted that assessee's niece Hansa Kanwar was diagnosed with "osteomyelitis pathological fracture" i.e. the situation where healthy bone is weekend due to abscess in bone. She has swelling in the thigh part due to which blood supply is reduced in affected part. she has been operated 3 to 4 times till date. Further her medical follow up and treatment is still continued in this respect. The assessee submitted her medical report mentioning disease and treatment done. Due to this medical emergency,



assessee was not able to file appeal within the time of 60 days as prescribed and due to above facts the delay of 923 days has been caused. The above delay is because of the reasons beyond assessee's control.

3.3. Ld. Counsel also relied on the decision of Hon. Supreme Court in case of Collector, Land Acquisition vs. Mst. Katiji & Ors (1987 AIR 1353) where it was held that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

4. Therefore the Ld. Counsel for the assessee submitted that due to medical emergency, assessee used to visit frequently hospital and there was a tension environment in the family due to prolonged disease in the family, therefore assessee could not pay attention on the taxation matters and therefore could not file the appeal before the Tribunal on time. The Ld. Counsel submitted that assessee has submitted medical papers and medical certificates which clearly shows that due to prolonged disease and medical urgency, the assessee could not pay attention to file the appeal on time before the Tribunal. Therefore ld. Counsel contended that the delay in filing the appeal may be condoned.

5. On the other hand, Ld. D.R. for the Revenue submitted that assessee has failed to prove sufficient cause for condonation of delay and medical urgency is not a sufficient cause to condone the delay. In the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further submitted that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend



the period of limitation on equitable grounds. Therefore, the delay in filing the appeal may not be condoned.

6. We have heard both the parties on this preliminary issue. We note that assessee submitted before us medical papers and medical certificates. We have examined the medical papers and medical certificates and noted that due to prolonged disease, assessee could not file the appeal before this Tribunal on time. Due to prolonged disease, there was a tension environment in the family. We note that power to condone the delay is discretionary and the discretion must be judicially exercised. If there was no sufficient cause for not presenting the appeal within the limitation period, the delay may not be condoned. However, the words 'sufficient cause' should receive a liberal construction so as to advance substantial justice where no negligence nor inaction nor want of *bona fides* is imputable to the applicant [Bharat Auto Center v. CIT 282 ITR 366]. The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "**sufficient cause**" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, **deliberate inaction or negligence on the part of the appellant**. We note that medical ground is a sufficient cause to condone delay. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. Therefore we condone the delay in filing both these appeals.



7. On merits, Ld. Counsel for the assessee submitted that assessee's appeal in ITA No. 388/RJT/2025 pertaining to Asst. Year 2009-10 is on quantum proceedings. Both the orders of the lower authority, that is assessment order as well as the appellate order passed by the Ld. CIT(A) are ex-parte order, as the assessee could not appear before both the lower authorities, due to circumstances, beyond his control as the prolonged disease was going on in the family and that is why assessee could not pay the attention on the notices issued by the assessing officer and the Ld. CIT(A). The Ld. Counsel for the assessee therefore contended that one more opportunity should be given to the assessee to plead his case before the assessing officer. Now the assessee is ready with documents and evidences and also wants to file the additional documents and evidences. Therefore both the appeals may be restored back to the file of assessing officer for fresh adjudication.

8. On the other hand, Ld. D.R. for the Revenue did not have any objection if the matter is remitted back to the file of the assessing officer for fresh adjudication, however he stated that on account of non-compliance attitude of the assessee, a cost of Rs.3,000/- may be imposed on the assessee.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that in the assessee's case under consideration, the assessment was carried out u/s 144 of the Act and the impugned order passed by the Id. CIT(A), is an ex parte order and non-speaking order, therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee. Considering the above facts, we note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). We note that the Id. CIT(A) did not



discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. However, on account of non-compliance attitude of the assessee, we impose a cost of Rs.3,000/- on the assessee, which shall be deposited in the Prime Minister National Relief Fund. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of assessing officer for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits. It is needless to say that the assessee will be at liberty to adduce any evidences as deemed relevant before the assessing officer at the time of assessment, proceedings in consequence to this order and the Assessing Officer shall, allow the assessee adequate opportunity of being, heard and to make relevant submissions, and then pass a speaking order which is fair and judicious. For statistical purposes, the appeal of the assessee is treated as allowed.

10. Since, we have remitted the quantum appeal of assessee in ITA No. 388/RJT/2025, to the file of assessing officer, therefore, penalty appeal of the assessee in ITA No. 418/RJT/2025 u/s 271(1)(c) of the Act, does not have any leg to stand, hence, we dismissed the same. However, the assessing officer is at liberty to initiate fresh penalty in de-novo proceedings, if any, as per the provisions of the Act.



11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 15 /10/2025

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 15/10/2025

**rk*

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot