

**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.721 & 722/SRT/2025
Assessment Year: 2012-13**

Bhuvnesh Bimalchand Jain A-303, Swagat Complex, AAI Mata Chowk, Puna Kumbharia Road, Surat - 395010 PAN – AEFPJ6345A	Vs	ITO, Ward -3(2)(6) Aayakar Bhavan, Anvil, Adajan Surat - 395009
(Appellant)		(Respondent)

Assessee by	Shree Ramesh Malpani, CA
Revenue by	Shri J.K Chandnani, 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. 27.03.2025 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 2012-13.

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. **721/SRT/2025, A.Y 2012-13** as lead case and facts narrated therein.

3. At the very outset, we noticed that there is delay of 33 days in filing the present appeal and in this regard an application for seeking condonation of delay has been filed by the assessee, wherein the same is reproduced herein below:

I am filing herewith appeal against order of Hon'ble CIT (A), NFAC. Delhi [CIT (A)] for 27/03/2025, the appellant did not receive any alert SMS regarding the same. Appellant A.Y. 2012-13 passed on 27/03/2025. Though this appeal order was passed on came to know about this appeal order only on 28/06/2025. when the CA of appellant logged into his ITBA account to see status of the appeal. Before that the appellant. neither received copy of this appeal order nor any mobile alert about passing of this order and was totally unaware of the same. Appellant came to know about this appeal order only on 28/06/2025 when informed by his CA regarding the same, when he logged into his ITBA account and then appellant downloaded the same.

Hence, there is delay of 37 days in filing of this appeal before Hon'ble ITAT. This delay is on account of bonfide reason of appellant being unaware of the said appeal order passed by Id. CIT (A). Appellant submits that he is small salaried person and is not acquainted about Income tax law and procedures. Appellant, therefore, pray for condoning any such delay and for admitting and adjudicating this appeal in the interest of justice..

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 counsels for both the parties on the 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 principle 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 us. Therefore we condone the delay and admit the appeal to be heard on merits.

6. On going through the case file we noticed that the appeal of the assessee was rejected by Ld. CIT(A) on the ground that the same was not filed within limitation and even application of condonation of delay was not filed. In this regard Ld. AR submitted that there was no delay in filing the appeal before Ld. CIT(A) and moreover Ld. CIT(A) had not provided any opportunity of hearing or show cause notice to the assessee before dismissing the appeal in *limine*. It was also submitted that Ld. CIT(A) has violated the principles of natural justice.

7. On the other hand Ld. DR contested the arguments raised by the assessee.

8. Be that as it may, without going into the merits of the issues raised by the assessee and taking into consideration the facts narrated before us and while taking a lenient view that before dismissing the appeal of the assessee Ld. CIT(A) ought to have issued show cause notice to the assessee or had accorded opportunity to the assessee for moving application for seeking condonation of delay. Since the order has been passed by Ld. CIT(A) without providing sufficient opportunity to the assessee therefore the same is in violation of principles of natural justice and in our view the rights of the parties cannot be scuttled down in the absence of sufficient opportunity. Therefore we are of the view that the matter needs to be restored back to the file of Ld. CIT(A) for providing opportunity of hearing to the assessee for moving appropriate application or affidavit for seeking condonation of delay if any in case any such application is filed then then in that eventuality the Ld. CIT(A) directed to adjudicate the same on merits in accordance with law.

9. 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.

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

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11. as the facts and circumstances in this appeal are identical to ITA No. 721/SRT/2025 for the AY 2012-13 (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.