

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)  
AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 659/SRT/2025  
Assessment Year: 2011-2012**

Kirti Karsandas Nayak,  
Plot No. 244/28, GIDC,  
Umbergaon-396171.  
**PAN NO. ABBPN 3355 M**  
**Appellant**

ITO Ward-5,  
Fortune Square, Chala Road,  
Vapi-396191.  
**Vs.**  
**Respondent**

Assessee by : Mr. Parin Shah, CA  
Revenue by : Mr. J.K. Chandnani, Sr. DR

Date of Hearing : 09/10/2025  
Date of pronouncement : 30/10/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 11.10.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds :

1. *The order passed by AO and confirmed by NFAC is invalid, bad in law and required to be quashed.*
2. *Ld. NFAC erred in law and on facts in reopening of assessment u/s 148 of the Act.*
3. *Ld. NFAC erred in law and on facts in confirming addition of Rs. 879390 as short term capital gain*



*ignoring fact that appellant purchase car which does not result into any capital gain.*

4. *LD. NFAC erred in law and on facts in dismissing the appeal by observing delay ignoring fact that there is no delay in filing appeal.*
5. *Initiation of penalty u/s 271(1)(c) of the Act is unjustified.*

2. At the very threshold, the learned Counsel for the assessee drew our attention to the delay of eleven days in the filing of the present appeal, as noted by the Registry. Referring to the affidavit placed on record, the learned Counsel submitted that the delay was occasioned solely by the non-receipt of the order of the learned Commissioner of Income Tax (Appeals) on the assessee's registered e-mail address, and that immediately upon becoming aware of the order, the appeal was instituted without any undue lapse of time.

3. We have heard rival submissions of the parties and perused the relevant materials on record. Having regard to the trifling period of delay and the explanation furnished, which in our considered view constitutes a sufficient and bona fide cause, we are persuaded to condone the delay in the interest of substantial justice. The delay of eleven days in filing the appeal is accordingly condoned, and the appeal is admitted for adjudication.

4. Upon perusal of the impugned appellate order, it transpires that the assessee had remained *ex parte* before the learned Commissioner (Appeals), and that there had also been a delay in



the presentation of the appeal before him. The learned Commissioner (Appeals), taking note of the delay, dismissed the appeal *in limine* without entering into the merits of the case.

5. Before us, the learned Counsel for the assessee has submitted that, in the interest of justice, the assessee may be afforded one further opportunity to appear before the learned Commissioner (Appeals) and to place on record an appropriate application, supported by affidavit, seeking condonation of the delay before that authority.

6. Having regard to the facts and circumstances of the case and bearing in mind that the principles of natural justice constitute the very foundation of adjudicatory fairness, we are of the view that the ends of substantial justice would be best served if the assessee is granted such opportunity. Accordingly, the impugned order of the learned Commissioner (Appeals) is set aside, and the matter is restored to his file with the direction to first consider the assessee's application for condonation of delay in the light of the facts and evidence to be adduced, and, if the delay is condoned, to thereafter dispose of the appeal on merits, in accordance with law, after affording due opportunity of hearing to the assessee.



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

**Order pronounced by way display of result on notice board on 30/10/2025 under Rule 34(4) of ITAT Rules, 1963.**

**Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Dated: 30/10/2025  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Surat**