

**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. 641/SRT/2025  
Assessment Year: 2012-2013**

Raghunandan Impex Pvt. Ltd.,  
6/2037, Office No. 205, 2<sup>nd</sup> floor,  
Papadwala Building, Bhoja Bhai  
Ni Sheri, Mahidharpura,  
Surat-395003.

**PAN NO. AAECR 5688 Q**  
**Appellant**

**Vs.**

ITO Ward 2(1)(1),  
Room No. 222,  
Aayakar Bhavan,  
Majura Gate,  
Surat-395001.

**Respondent**

Assessee by : Mr. Prakash Jhunjhunwala, CA  
Revenue by : Mr. J.K. Chandnani, Sr. DR

Date of Hearing : 08/10/2025  
Date of pronouncement : 30/10/2025

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 27.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-2013, raising following grounds:

*1.0 On facts and circumstances of the case and in law, Ld. CIT(A), before deciding the quantum appeal, erred in passing the appeal order pertaining to levy of Penalty u/s.271(1)(c) of the Act;*

*2.0 On facts and circumstances of the case and in law, Ld CIT(A) erred in deciding the penalty appeal, without issuing any*



*notice of hearing, thereby violated the principle of natural justice;*

*3.0 On facts and circumstances of the case and in Law, Ld CIT(A) erred in not condoning the delay in filing of the appeal of 335 days, though there exist bonafide reasons that had precluded the appellant to file the appeal in time:*

*4.0 On facts and circumstances of the case and in Law, Ld. CIT(A) ought to have deleted the levy of penalty u/s.271(1X)(c) of Rs.7,72,500/- in respect of addition made u/s.68 of alleged non-genuine purchase of traded goods made from M/s. Gangotri Exim P Lid and M/s. Aditi Gems Pvt Ltd of Rs.25,00,000/-;*

*5.0 The Ld. CIT(A) ought to have considered the bonafide explanation and existence of debatable issues and divergent views. under which circumstances the levy of penalty u/s.271(1)(c) is unjustified.*

2. At the very outset, the *Ld. Counsel for the assessee* invited our attention to the defective memo issued by the Registry pointing out a delay of **490 days** in the filing of the present appeal. The *Ld. Counsel* submitted that the delay was occasioned by circumstances wholly beyond the control of the assessee and supported his plea by placing on record an affidavit duly sworn by Shri Kailash B. Tiwadi, Managing Director of the assessee company.

2.1 In the said affidavit, the deponent has deposed, *inter-alia*, that the impugned order of the Ld. Commissioner of Income-tax (Appeals) was transmitted to the e-mail address *d0829@msco.in*, belonging to the assessee's erstwhile Chartered Accountant. The said Chartered Accountant had severed his professional association with the assessee without intimation; and that consequently, the assessee remained wholly unaware of the order's passing. It was only upon receipt of a telephonic



intimation from the Department in connection with recovery proceedings that the assessee became aware of the appellate order.

2.2 Thereafter, the assessee immediately engaged new counsel and caused the present appeal to be filed. It was further explained that the assessee had been under a bona fide belief that the appeal relating to penalty could not be disposed of prior to the conclusion of the quantum appeal pending before the *Ld. CIT(A)*, and that such misapprehension, coupled with personal and familial exigencies, contributed to the delay.

2.3 It was also brought to our notice that the mother of the Managing Director passed away on 01.02.2024 at his native place in *Bhilwara, Rajasthan*; that he remained there for a considerable period attending to her illness and subsequent family disputes; and that he eventually relocated to *Mumbai* after the closure of business operations, thereby compounding his difficulty in ensuring timely compliance. The relevant portions of the affidavit, containing the sequence of events and the explanation for delay, are extracted in the record for ready reference. The relevant part of the affidavit is reproduced as under:

*3. THAT, the delay in filing of the 2nd appeal before Hon'ble ITAT had occurred under the bonafide reasons and compelling circumstances beyond my control, stated as under :-*

*a) The CIT(A) order had not been served to me, since was sent at the email address viz. d0829@msco.in belonging to my earlier Chartered Accountant M/s Manoj Sandhya & Co. However, the said Chartered Accountant deserted me and did*



*not inform me about the passing of the CIT(A) order. It is only upon receipt of a telephone call from the Income Tax department, I was made aware that the 1<sup>st</sup> appeal pertaining to levy of penalty has been passed. Accordingly, I immediately appointed M/s. Prakash Jhunjhunwala & Co. LLP, Chartered Accountant and filed the 2<sup>nd</sup> appeal with a prayer for condonation of delay;*

*b) I and my Chartered Accountant were under a bonafide belief that the penalty appeal cannot be decided before the decision on quantum appeal. I had already made part submissions in the quantum appeal and was under a belief that on following the provision of Sec.274(2), the penalty u/s.271(1)(c) shall automatically stand modified upon deletion/ reduction of the quantum addition. Accordingly, till the decision of Ld. CIT(A) of quantum addition, the 2nd appeal pertaining to levy of penalty u/s.271(1)(c) could not be filed;*

*c) I had gone to my hometown situated at Bhilwara, Rajasthan for substantial period of time to attend the serious medical illness of my mother and she ultimately died on 01/02/2024 (copy of death certificate enclosed). Thereafter, due to bitterness and disputes with my elder brother on ancestral property matters, I was residing at Bijaynagar, Rajasthan and my non-presence at Surat had caused the delay in filing of the 2nd appeal before Hon'ble ITAT;*

*d) Due to complete closure of my business activities, I had permanently shifted my place of residence at Mumbai. Also, I am not conversant with the Income Tax Law and I did not have any staffs to assist me to file the appeals and my confusion in respect of the quantum and penalty appeals had resulted in delay in filing of the 2nd appeal before Hon'ble ITAT;*

*There is no willful attempt nor gross negligence to delay the filing of the 2nd appeal, however the delay had occurred unintentionally under the bonafide reasons stated hereinabove. I respectfully make a prayer before the Hon'ble Income Tax Appellate Tribunal to adopt a liberal approach and condone the delay in filing of the 2nd appeal and decide the appeal on merits;"*

3. We have carefully heard the rival submissions and have perused the entire record with circumspection. Although there is indeed a considerable delay in the institution of the appeal, the explanation tendered by the assessee is neither perfunctory nor evasive. The reasons adduced, duly supported by affidavit, reveal



that the delay was occasioned by a chain of bona fide and unavoidable circumstances — including non-communication of the appellate order due to the conduct of the erstwhile Chartered Accountant, subsequent discovery of the order upon departmental intimation, personal bereavement, and a genuine misconception regarding the interlinkage between quantum and penalty proceedings.

3.1 We find substance in the plea that the assessee was prevented by *sufficient cause* within the meaning of Section 5 of the Limitation Act, 1963, from filing the appeal within the prescribed time.

3.2 It is a well-enshrined principle of law, as laid down by the *Hon'ble Supreme Court* in *Collector, Land Acquisition v. Mst. Katiji & Others* [(1987) 167 ITR 471 (SC)], that the expression “sufficient cause” should receive a liberal and justice-oriented construction so as to advance the cause of substantial justice. The Court therein observed that technicalities should not be permitted to defeat the ends of justice and that a litigant should not suffer for the inadvertence or default of his representative, particularly when the explanation is bona fide and devoid of malafides.

3.3 Adopting the same benevolent and equitable approach, we are satisfied that the delay in the instant case is neither deliberate nor motivated by negligence but arose under circumstances beyond the reasonable control of the assessee. We



therefore, in the exercise of our judicial discretion, **condone the delay** of 490 days in the filing of the appeal.

4. Proceeding to the next issue, the *Ld. Counsel for the assessee* submitted that the appeal against the quantum assessment order is still pending adjudication before the *Ld. CIT(A)* and, therefore, the disposal of the penalty appeal by the *Ld. CIT(A)* prior to the final determination of the quantum addition was premature. It was argued that the penalty imposed under Section 271(1)(c) is intrinsically dependent upon the fate of the corresponding quantum addition and that the deletion, modification, or sustenance of the same would directly influence the outcome of the penalty proceedings.

4.1 The *Ld. Departmental Representative (DR)*, though not in complete agreement, did not seriously controvert the factual matrix or the legal implications advanced by the *Ld. Counsel*.

4.2 We have considered to the submissions of both sides. In principle, there is no statutory bar precluding the *Ld. CIT(A)* from adjudicating a penalty appeal even while the quantum appeal remains pending. Nevertheless, in the judicial balance between technical authority and procedural fairness, it is always desirable that the determination of penalty—being consequential in nature—should await the final outcome of the quantum proceedings.



4.3 The rationale is self-evident: the foundation of the penalty lies in the quantum addition; if that foundation is unsettled, the superstructure of penalty cannot stand independently. Should the quantum addition be deleted or modified, the penalty would automatically require proportionate reconsideration. Thus, in the larger interest of justice, avoidance of multiplicity, and consistency of adjudication, we deem it just, proper, and in consonance with judicial prudence that the penalty appeal be restored for decision after the disposal of the quantum appeal by the *Ld. CIT(A)*.

5. Accordingly, we set aside the impugned order of the *Ld. CIT(A)* and restore the matter to his file with a direction that the penalty appeal be decided subsequent to and in conformity with the outcome of the quantum assessment proceedings.

6. The *Ld. CIT(A)* shall, while doing so, first consider the issue of condonation of delay before him, if any, in accordance with law and upon affording due opportunity of hearing to the assessee, thereafter decide the issue of merit or any other ground challenging validity of penalty.

7. The ground No. 1 of the appeal of the assessee is accordingly allowed and the remaining grounds are rendered academic and therefore, same are not adjudicated upon at this stage.



8. 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**

Surat;

Dated: 30/10/2025

Rahul Sharma, Sr. P.S. (on Tour)

**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**