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. 545/SRT/2025
Assessment Year: 2010-2011

Sumitlal, 101-b/2, Sanskrut flats Umra, Bharthana, Surat-395007 **PAN NO. ACXPL 1238 Q** **Appellant**	***Vs.***	ITO Aayakar Bhavan, Surat-395007. **Respondent**

Assessee by	:	Mr. Nitin Paharia, CA& Mr. Ram Deepak Heda, AR
Revenue by	:	Ms. Namita Patel, 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 28.03.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-2011, raising following grounds:

1. *That under the facts and circumstances of the case and in law the Ld CIT (Appeals), NFAC (National Faceless Appeal Centre), Delhi has grossly erred in sustaining the addition of Rs. Rs. 2624315/- made by the Ld AO on account of unexplained investment under section 69 of the Act.*
2. *That while sustaining the impugned addition Ld CIT(Appeals), NFAC, Delhi has erred in law in ignoring the*

fact as well law that transaction of mutual fund investment Rs. 2624315/-.

3. *That while sustaining the impugned addition Ld CIT(Appeals), NFAC, Delhi has also erred in law in ignoring the peculiar facts & circumstances of the case & without perform any investigation or establish any case to answer.*
4. *That while sustaining the impugned addition Ld CIT (Appeals), NFAC, Delhi has also failed to give proper and reasonable opportunity to the appellant. Thereby violation the principles of natural justice and condition and procedure prescribed under the statue.*
5. *That while sustaining the impugned addition Ld CIT (Appeals), NFAC, Delhi has erred in law in ignoring as per the newly inserted proviso to section 251(1)(a) of the Act, Commissioner (Appeals) in case of order of assessment made u/s. 144 of the Act, may set aside such assessment and refer the case back to the Ld. AO for making a fresh assessment. This proviso has been inserted in the Act w.e.f.1.10.2024. The said proviso to section 251(1)(a) of the Act is reproduced as under 251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers 1. in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.Provided that where such appeal is against an order of assessment made under section 144 he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment.*

2. Briefly stated, the facts of the case are that the assessee did not file his return of income for the year under consideration within the prescribed time. The assessee was accordingly identified as a non-filer in the electronic database of the Income-tax Department. It further came to the notice of the Department that the assessee had made investments aggregating to ₹22,24,315/- in mutual funds during the relevant previous year.

2.1 In view of the non-filing of the return of income coupled with the aforesaid investment, the Assessing Officer recorded reasons to believe that income chargeable to tax had escaped assessment and, accordingly, issued notice under section 148 of the Income-tax Act, 1961 on 28.03.2017, duly served upon the assessee. However, despite service of notice, no return was filed in

response. Repeated statutory notices and a final show-cause notice were also issued during the reassessment proceedings, but the assessee remained non-compliant. Consequently, the Assessing Officer completed the reassessment *ex parte* under sections 147 read with 144 of the Act on 23.10.2017, treating the sum of ₹22,24,315/- representing the investment in mutual funds as unexplained investment under section 69 of the Act.

2.2 Against the said assessment order, the assessee preferred an appeal before the learned Commissioner of Income-tax (Appeals) on 13.05.2024 — manifestly after an inordinate delay of 1647 days. As recorded in the impugned order, several notices were issued by the learned first appellate authority, but except for seeking adjournments, the assessee failed to make any substantive compliance or submission.

2.3 The sole explanation advanced before the learned CIT(A) was that the assessment order had not been served earlier, and that it came to the knowledge of the assessee only upon being received by email on 30.04.2024. The learned CIT(A), however, found such explanation wholly unsatisfactory, particularly in absence of any material to substantiate the same. After discussing the provisions of section 249(3) of the Act and the principles governing condonation of delay under section 5 of the Limitation Act, the learned CIT(A) held that the delay of 1647 days had not been explained by any reasonable or sufficient cause and accordingly he rejected the condonation of the delay in filing appeal observing as under:

"5.1. As per declaration in Form number 35, the date of order and the date of service of the impugned order is stated to be on 23/04/2017. In fact, as per the Assessment Order, the date of order is 23/10/2017. The date of service of order is stated to be 30/04/2024. In view of this, the appeal which has been instituted on 13/05/2024 has been found not to be in time. The appellant alleged in the Statement of Facts that, "The AO has failed to perform any investigation or establish any case to answer. The AO apparently did not even have the intention to serve the notices on a proper person or on a proper address. The notices were neither issued nor served on a proper person in accordance with law& hence are void, illegal and without jurisdiction. No valid assessment can be made u/s 143(3) on the strength of such notices that were not served in accordance with the law. The assessment order was not served to assessee after request to AO the assessment order along with notice of demand was served to assessee on mail 30.04.2024". This contention of the appellant is not acceptable.

5.2. The pertinent question here is whether there was any delay in filing of the objections and if so whether the same has been satisfactorily explained. There was a delay in filing appeal and the appellant is bound to explain the delay of 1647 days, (excluding the period allowed by the Hon'ble Supreme Court vide Suo Moto Writ Petition (C) No.3 of 2020) which is an extraordinary delay in filing of this appeal, on day-to-day basis. The appellant in column No. 14 of Form No. 35 in against the question "whether there is delay in filing appeal" replied as "Yes". As per Column 15 of Form 35, the appellant has given the reason for delay as "Due to not received order now received on mail by Ld.ITO on 30/04/2024". लो

5.3. The onus is on the appellant to establish and substantiate the day-to-day delay of 1647 days duration which has not been discharged by the appellant. The Appellant has to show "sufficient cause" for the said delay of filing appeal but the appellant has failed to show "sufficient cause" for such delay of 1647 days (excluding the period allowed by the Hon'ble Supreme Court vide Suo Moto Writ Petition (C) No.3 of 2020). The appellant has merely given the cause for the delay as "Due to not received order now received on mail by Ld.ITO on 30/04/2024". However, the appellant has failed to upload the material evidence and circumstances which prevented him from filing the appeal in time. It must be stated here that during that period the e-filing Portal of the Department was never under technical fault for 1647 days. Therefore, the claim of the appellant cannot be considered as the reasonable and sufficient cause for condoning the delay in filing the appeal.

5.4. At this point, it is pertinent to mention that the provisions of section 5 of the Limitation Act 1961 are pari-materia to the provisions Sec 249 of the Act as both the provisions stipulated that after expiry of stipulated period of limitation as per provisions of the relevant Act, if the court is satisfied that there was a "sufficient cause" for non-presenting the appeal within prescribed period, then the appeal may be admitted for hearing on merits by condoning the delay. It is true that an order condoning the delay in filing the

appeal is a discretionary one, but it is also pertinent to note that if discretion has been exercised on the wrong principles by giving undue liberal approach which is not at all justice oriented, then the purpose of these provisions would be defeated and frustrated. The courts have also held that discretion should not be exercised in favour of a person who neglects his own rights, for a pretty long time, in preferring appeals and causes extraordinary delay without any sufficient cause.

5.5. In view of the above position, the appeal ought to have been filed on or before 22/11/2017. Instead, the appeal was filed on 13/05/2024. As such the appeal is belated by 1647 days."

2.2 The Ld. CIT(A) after considering the various decisions on the issue in dispute, concluded that the appeal, having been filed belatedly without any sufficient cause, was not maintainable and rejected the same *in limine* observing as under:

"5.10. It is also true that appeals having merits should not be thrown away merely because there is some delay in filing the appeal and the appellant should be allowed to press its case on merits in the interest of justice and for the cause of Justice. But in the instant case there is an extraordinary delay of 1647 days (excluding the period allowed by the Hon'ble Supreme Court vide Suo Moto Writ Petition (C) No.3 of 2020) in filing of appeal, for which the appellant has failed to show "sufficient cause" which could justify or properly explain the delay which occurred from last day of filing appeal as per statutory provisions of the Act. The Appellant was well aware of the factual and technical aspects of the case, the Appellant was never in dark, never seems to be ignorant about the law.

5.11. The Hon'ble Supreme Court in the case of Basawaraj & Anr vs. Special Land Acquisition Officer in its order dated 22 August, 2013 held inter-alia that, an unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

5.12. Undoubtedly, in the peculiar facts and circumstances of the instant case, the appellant is guilty of gross negligence and inaction. "Vigilantibus non dormientius aequitas subvenit" which means equity aids the vigilant and not the ones who sleep over their rights. It refers to the unreasonable delay in enforcing a legal claim or moving ahead with legal enforcement as a right.

5.13. The appellant has merely stated that "Due to not received order now received on mail by Ld.ITO on 30/04/2024", but has not discharged the onus cast on him by law to furnish evidence in furtherance of the claim when the opportunity was given. In other words, it is a settled legal proposition that law of limitation may

harshly affect a particular party, but it has to be applied with all its rigour when the statute so prescribes. The CIT(Appeals) has no power to extend the period of limitation on equitable grounds. The legal maxim DURA LEX SED LEX which means the law is hard but it is the law, stands attracted in this situation.

5.14. It must be mentioned here that recently in the Service Tax appeal, the Hon'ble High Court of Kerala in the case of Vattiyoorkavu Service Co-operative Bank Vs Commissioner of Appeals in WP (C) No.32372 of 2023 dated 20th October 2023 has held that the Commissioner of Income Tax (Appeals) cannot condone the delay for more than one month.

5.15. In view of the above, respectfully following the judicial pronouncements given by the Hon'ble Courts, I am of the considered opinion that the Appellant has failed to give the sufficient reason for the delay of filing of appeal. Since the condonation of delay is not granted, the Appeal filed is not maintainable on technical grounds. Under the admitted circumstances, in the present case, the Appellant has failed to substantiate that there was sufficient cause for not filing the appeal within the prescribed time frame and has as such failed to explain the unreasonable delay of 1647 days satisfactorily. Therefore, the delay in filing the appeal is not condoned."

3. Before us, the learned counsel for the assessee submitted that due to lack of proper legal advice, the assessee could not file a proper application for condonation of delay before the learned CIT(A). It was further submitted that the assessee is a Non-Resident Indian, residing in Singapore with his family for the last one year, and due to such circumstances, he was unable to pursue the proceedings in India in a timely manner. The learned counsel, therefore, prayed that one final opportunity be granted to the assessee to file a detailed explanation supported by an affidavit explaining the delay in filing the appeal before the learned CIT(A). A copy of the assessee's passport was also placed on record in support of the contention regarding residence abroad.

3.1 We have carefully considered the rival submissions and perused the record. The issue involved is essentially procedural — whether in the facts and circumstances of the case, an opportunity should be afforded to the assessee to properly explain the delay in filing the appeal before the first appellate authority.

3.2 It is trite law that though limitation may, at times, operate harshly, yet in matters involving substantial justice, the courts have consistently leaned towards allowing parties to contest matters on merits, rather than non-suiting them on technical grounds. The Hon'ble Supreme Court in *Collector, Land Acquisition v. Mst. Katiji* [(1987) 167 ITR 471 (SC)] has emphasized that substantial justice must prevail over technical considerations. The same principle has been reiterated in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123], wherein it was held that a liberal approach is warranted when refusal to condone delay may result in miscarriage of justice.

3.3 In the present case, the assessee's explanation, though not satisfactory before the learned CIT(A), deserves one more opportunity for proper substantiation, especially in light of his non-resident status and the contention of belated communication of the assessment order. We are, therefore, persuaded to adopt a view that would advance the cause of justice rather than stifle it at the threshold.

3.4 Accordingly, while upholding the general principle that law of limitation cannot be diluted at whim, we deem it appropriate, in the peculiar facts of the case, to restore the matter to the file of the learned CIT(A) with a direction to consider the assessee's application for condonation of delay afresh. The assessee shall file, within the time to be prescribed by the learned CIT(A), a detailed affidavit setting forth the reasons explaining the delay, along with all documentary evidence in support thereof. The learned CIT(A), after affording due opportunity of hearing to the assessee, shall pass a speaking order in accordance with law. If the delay is condoned, the appeal shall thereafter be adjudicated on merits. The ground No. 4 of the appeal of the assessee is allowed. Since we have already restored the appeal to the file of the Ld. CIT(A), the other grounds are rendered academic and same are not required to be adjudicated at this stage.

4. 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/-	**Sd/-**
(SANDEEP GOSAIN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**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.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Surat