

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND  
MISS. PADMAVATHY S, ACCOUNTANT MEMBER

I.T.A No.5009/Mum/2025  
(Assessment Year : 2009-10)

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| <b>Anjanaa Chattopadhyay</b><br>A 1003, Julian Apartments,<br>Wadala Link Road, Bhakti Park,<br>Wadala, Mumbai-400 037<br><b>PAN: AEBPC3044B</b> | vs | <b>Income Tax Officer-15(1)(4),<br/>Mumbai,</b><br>Aayakar Bhavan, M.K. Road,<br>Mumbai-400 020 |
| <b>APPELLANT</b>   |    | <b>RESPONDENT</b>   |

Assessee by : Shri Jitendra Singh  
Respondent by : Shri Surendra Mohan (SR.DR.)  
  
Date of hearing : 04/11/2025  
Date of pronouncement : 06/11/2025

**ORDER**

**Per Shri Anikesh Banerjee (JM):**

The instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [(for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for assessment year 2009-10, date of order 21/11/2022. The impugned order emanated from the order of the Ld. Income Tax Officer, Ward-15(1)(4), Mumbai (for brevity, the "Ld.AO") passed u/s 143(3) of the Act, date of order 29/12/2011.

2. In the present case, the Registry has reported that the appeal has been filed with a delay of 933 days. The Ld. AR submitted that the assessee, being a senior citizen, had placed complete reliance on her tax consultant, who was also a senior citizen and suffering from various ailments. Consequently, there was a communication gap and failure to attend to the notices and orders served through email. The Ld. AR further submitted that an affidavit duly executed by the assessee on 27.10.2025 has been filed on record, the relevant portion of which is reproduced hereunder for ready reference:

*“3. That, I and my husband had taken loan of Rs. 42,00,000/- from Bank of India for repairing renovation of the said the residential flat as the flat was in bad condition.*

*4. That, during the impugned assessment year 2009-10, I along with my husband, had sold the residential flat for total consideration Rs. 1,80,00,000/-*

*5. That, I was in Kolkata to take care of my ailing mother. On my behalf, my husband had attended the hearings before Ld. AO as he was also the co-owner of the flat and was aware of the facts and circumstances of the case.*

*6 That, I had engaged a tax consultant to take care of my income tax related matters and accordingly the tax consultant's email id was provided in the IT Portal of the Applicant.*

*7. That, I was under the Bonafide belief that my tax consultant would be taking care of my matter. However, the tax consultant due to his old age and illness was not able to file timely response to the various notices issued to me.*

*8. That, the Ld. CIT(A) had passed ex-parte order upholding the assessment order passed by the Ld. A.O and rejecting the application for condonation of delay. The appellate order passed by Ld. CIT(A) was uploaded on the IT Portal.*

9 That, the tax consultant Mr. Deepak Merchant, CA was a senior citizen and was not keeping well from 2022 and ultimately passed away in the year 2023.

That, late Mr. Merchant due to his health issues failed to communicate about the existence of the impugned order passed by the Ld. CIT(A) to me and I was not aware of password of my IT portal due to which I was not able to open my e-filing portal.

11. That, during the period when the order was passed, I was in Kolkata to look after my mother.

12. That, it was only when I was served dated 29.12.2011 for recovery of outstanding demand, I appointed new tax consultant to take care of my income tax matters.

13. That, the new tax consultant had attempted to reset the password of my IT portal and came to know about the existence of the order passed by the Lid CIT(A)

14. That, the new tax consultant immediately advised me to file the appeal before the Hon'ble Appellate Tribunal against the appellate order passed by Ld. CIT(A).

15. That, I had forwarded all the relevant details/documents to my new tax consultant to prepare the appeal memo and file the same before the Hon'ble Appellate Tribunal. The new tax consultant prepared the appeal memo and sent me for my verification and signature. After going through the appeal papers prepared by my tax consultant, I signed the appeal memo and filed the same before the Hon'ble Appellate Tribunal on 11.08.2025. However, by that time the appeal was barred by limitation by 933 days.

16. That, it was under the above peculiar facts and circumstances, which were unforeseen and beyond my control, the appeal could not be filed before the Hon'ble Appellate Tribunal within the limitation period.”

The Ld. AR further submitted that the assessment was completed with an addition of Rs.60,05,140/- by treating the entire long-term capital gain as taxable under section 45 of the Act. The assessee preferred an appeal before the Ld. CIT(A), which was itself delayed by 635 days. However, the Ld. CIT(A), without examining the merits of the case, dismissed the appeal solely on the ground of limitation. Aggrieved by such dismissal, the assessee has now preferred the present appeal before us along with a prayer for condonation of delay.

3. The Ld. DR argued & did not raise any strong objection to the submissions of the assessee.

4. We heard the rival submissions and considered the documents available on the record. We find that the assessee has filed the appeal with a delay of 933 days and has a sufficient cause for filing the appeal belatedly before the ITAT. We place reliance on the judgment of the Hon'ble **Supreme Court** in **N. Balakrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222 / (1998) 7 SCC 123**, dated **03/09/1998**, wherein it was held as under:

*“Rules of limitation are not meant to destroy the rights of parties. They are meant to ensure that parties do not resort to dilatory tactics but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy. Time is precious and wasted time never revisits. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. Thus, a life span must be fixed for each remedy. Unending period for launching a remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim **interest reipublicae ut sit finis litium** (it is for the general welfare that there*

*be an end to litigation). Rules of limitation are not meant to destroy the rights of parties, but to ensure that remedies are sought within a legislatively fixed period of time.”*

In view of the above, we are satisfied that there exists sufficient cause for condoning the delay of 933 days. Respectfully following the judgment of the Hon’ble Supreme Court, we condone the delay and admit the appeal for adjudication on merits. So, accordingly, the delay of 933 days is condoned.

5. On perusal of the appellate order, it is noted that the delay in filing the appeal was 635 days. The assessee explained the reasons for the delay by filing a duly sworn affidavit before the Bench. There is no apparent infirmity or inconsistency in the said affidavit. Assessee also explained delay for filing appeal before the Ld. CIT(A) by submitting online electronic reply on 21/10/2021 & 01/11/2022. The Ld. CIT(A) rejected the appeal on the technical ground of absence of sufficient cause for condonation of delay.

Respectful reliance was placed on the judgment of the Hon’ble Gujarat High Court in the case of **Rajendrakumar Maneklal Shah (HUF) vs CIT 213 ITR 715**, which supports the proposition that procedural delays, when reasonably explained, should not defeat substantive justice. We restore the appeal to the file of the Ld. CIT(A) for denovo adjudication.

Accordingly, we direct the assessee to submit the Affidavit before the Ld. CIT(A) by explaining the delay in filing appeal before 1<sup>st</sup> appellate authority. The Ld. CIT(A) is directed to consider the delay of 635 days in lenient approach and to adjudicate the matter afresh by passing a reasoned and speaking order after affording an opportunity of hearing to the assessee.

Needless to say, the assessee shall be granted a reasonable opportunity of being heard in the remanded proceedings. Simultaneously, the assessee is expected to act diligently and extend full cooperation to ensure expeditious disposal of the appeal.

6. In the result, the appeal of the assessee bearing **ITA No.5009/Mum/2025** is allowed for statistical purpose.

Order pronounced in the open court on 06<sup>th</sup> November 2025

Sd/-

(PADMAVATHY S)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 06/11/2025  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
MUMBAI
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, MUMBAI