IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.191/Ahd/2025
(Assessment Year: 2016-17)

Axiomatic iTech Pvt. Ltd., 801, Shapath-2, Opp. Rajpath Club, S G Road, bodakdev, Ahmedabad-380015	Vs.	Income Tax Officer, Ward-1(1)(4), Ahmedabad
[PAN No.AAJCA1274G]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri S N Divatia, AR
Respondent by:	Shri C Dharani Nath, Sr. DR

Date of Hearing	17.09.2025
Date of Pronouncement	06.11.2025

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 02.06.2023 passed for A.Y. 2016-17.

2. The assessee has raised the following grounds of appeal:

"1.1 The order passed by U/s. 250 passed on 02.06.2023 by NFAC, [CIT(A)], Delhi (for short CIT(A)" upholding the disallowance of deduction u/s 35(1)(ii) of Rs. 43,75,000/- made by A.O. is wholly illegal, unlawful and against the principles of natural justice.

2.1 The ld. CIT(A), has grievously erred in law and or on facts in not appreciating that there could not be compliance to the notices claimed to be issued mainly on account of failure of the previous tax consultant and the appellant was under a genuine and bonafide belief that due compliance was being made by the previous tax consultant. Thus, there was a sufficient cause for failure to comply with the notices claimed to be issued by NFAC.

2.2 That the in the facts and circumstances of the ld. CIT(A), ought to have appreciated that there was a sufficient cause for failure to respond to the notices issued during the Corona Covid 2019 period i.e. January, 2020 to February, 2022 and thereafter only single notice was issued on 21.04.2023. Thus, there was gross violation of the principles of natural justice.

3.1 The ld. CIT(A) has grievously erred in law and or on facts in upholding the disallowance of deduction/s 35(1)(ii) of Rs. 43,75,000/- made by A.O, though it was supported by various documents/evidence and the appellant had no reason to disbelieve the same.

3.2 That the in the facts and circumstances of the ld. CIT(A), ought not to have upheld the disallowance of deduction u/s 35(1)(ii) of Rs. 43,75,000/- made by A.O."

3. The brief facts of the case are that the assessee filed its return of income for the Assessment Year 2016-17 on 15.09.2016 declaring total income of Rs. 1,38,535/-. The return was processed under section 143(1) of the Income-tax Act, 1961 (the "Act"), and later selected for limited scrutiny through CASS for the purpose of verifying the "large deduction claimed under section 35(1) of the Act." During the scrutiny proceedings, the Assessing Officer (AO) noticed that the assessee had claimed a weighted deduction of Rs. 43,75,000/- under section 35(1)(ii) on account of a donation of Rs. 25,00,000/- made to *Matrivani Institute of Experimental Research & Education* (MIER&E), Kolkata. To verify the genuineness of the claim, the AO issued a notice under section 133(6) of the Act to the said institute, calling for confirmation of the donation and relevant documents such as receipts, approval certificates, and bank statements. However, no response was received from the institute. Consequently, the AO issued a show-cause notice to the assessee proposing to disallow the deduction claimed under section 35(1)(ii) of the Act, on the ground that **the Central Government, vide Notification No. 78/2016 dated 06.09.2016, had rescinded the approval earlier granted to *Matrivani Institute* with retrospective effect from**

01.04.2004, thereby deeming that the said notification of approval was never issued for any tax benefit under the Income-tax Act. In response, the assessee submitted that the donations were made in July 2015, well before the withdrawal notification dated 06.09.2016, and therefore, the deduction could not be denied merely because the approval was rescinded subsequently. The assessee relied on the Explanation to section 35(1)(ii) of the Act, which provides that a deduction cannot be denied merely because the approval of an institution is withdrawn after the donation has been made. However, the Assessing Officer rejected this explanation, holding that the rescission notification specifically stated that it would be deemed that the approval had never existed with effect from 01.04.2004. Thus, according to the AO, the Explanation to section 35(1)(ii) did not apply in this case. The Assessing Officer further noted that the assessee **filed its return after the issuance of the rescission notification and was therefore aware of the cancellation of the institute's approval**. Despite having an opportunity to revise the return, the assessee continued to claim the deduction, which the AO viewed as a deliberate attempt to avail an ineligible tax benefit. The AO also referred to an information letter from the CIT (Exemptions), Ahmedabad, which conveyed that a survey had been carried out by the Investigation Wing, Kolkata, at the premises of *Matrivani Institute*, revealing that it was engaged in facilitating bogus donations under section 35(1)(ii). It was found that donors, with the help of brokers and entry operators, received back the donation amount in cash after deduction of a small commission. The Assessing Officer noted that the statements recorded from key persons of the institute, including its President, confirmed the operation of such bogus donation networks. Relying on these findings and the CBDT's notification

cancelling the institute's approval, the AO held that the assessee's donation was not genuine but it was a colourable device designed to claim an inflated deduction of 175% under section 35(1)(ii). The Assessing Officer referred to the Supreme Court decision in *McDowell & Co. Ltd. v. CTO* [1985] 154 ITR 148 (SC), the AO held that tax avoidance through colourable devices cannot be permitted. The AO accordingly disallowed the deduction of Rs. 43,75,000/- claimed under section 35(1)(ii) of the Act and added the same to the total income of the assessee.

4. Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). During the appellate proceedings, several electronic notices were issued to the assessee by CIT(Appeals), providing multiple opportunities to file submissions and attend hearings. However, the assessee neither filed written submissions nor sought adjournments on any of the scheduled dates. The CIT(A), therefore, proceeded to decide the appeal ex parte based on the material available on record. The CIT(A) noted that the Assessing Officer had discussed the issue of disallowance in detail and had relied upon cogent material viz. the CBDT notification rescinding the approval of *Matrivani Institute* with retrospective effect and the findings of the Investigation Wing confirming that the institute was involved in issuing bogus donation receipts. The CIT(A) also observed that despite several opportunities, the assessee failed to substantiate its claim or produce any new evidence to rebut the findings of the Assessing Officer. Considering these facts, the CIT(A) held that the Assessing Officer's order was well-reasoned and justified. Referring to the principle laid down by the Hon'ble Madhya Pradesh High Court in *Estate of Late Tukoji Rao Holkar v.*

CWT [1997] 233 ITR 480 (MP) and by the ITAT Delhi Bench in *CIT v. Multiplan India (P.) Ltd.* [1991] 38 ITD 320 (Del.), the CIT(A) observed that law assists those who are vigilant and not those who sleep on their rights. Since the assessee failed to pursue the appeal despite sufficient opportunity, and no material was furnished to counter the findings of the AO, the CIT(A) upheld the disallowance made under section 35(1)(ii) and dismissed the appeal.

5. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

Application for condonation of delay of days in filing of the present appeal:

6. At the outset, we note that there is a delay of 545 days in filing of the present appeal. The assessee has filed an application for condonation of delay of 545 days in filing of the present appeal along with an affidavit explaining the reasons for the delay. We have carefully considered the submissions made in the application and perused the supporting affidavit placed on record. It is explained by the assessee that the impugned order of the CIT(A) dated 02.06.2023, was e-communicated to the assessee on or about 02.06.2023, and therefore, the appeal was required to be filed on or before 01.08.2023. However, the appeal came to be filed belatedly on 28.01.2025. The assessee has submitted that the delay was neither deliberate nor willful but occurred due to bona fide reasons beyond its control. The assessee submitted that the previous tax consultant, who was handling the matter, had informed the assessee that the appeal before the Tribunal was being filed and even stated

so in the reply filed to the penalty notice dated 08.08.2023. However, it later transpired that the said consultant had inadvertently failed to file the appeal. The assessee came to know about this lapse only upon receipt of a subsequent notice from the Assessing Officer dated 13.01.2025 in connection with penalty proceedings, whereafter the company appointed a new consultant who discovered that no appeal had been filed and immediately took corrective steps to file the same. The assessee has contended that the delay was due to an inadvertent lapse on the part of the previous consultant, which constitutes a reasonable and sufficient cause for condonation. The delay, therefore, deserves to be condoned in the interest of justice. Reliance has been placed on several judicial precedents in support of the prayer for condonation of delay. In particular, reliance is placed on the decision of the Hon'ble Supreme Court in **Collector, Land Acquisition v. Mst. Katiji & Others [1987] 167 ITR 471 (SC)**, wherein it was held that courts should adopt a liberal approach in considering applications for condonation of delay and that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Further reliance has been placed on **N. Balakrishnan v. M. Krishnamurthy [(1998) 7 SCC 123]**, wherein the Hon'ble Supreme Court held that the rules of limitation are not meant to destroy the rights of parties but to ensure that remedies are sought without unreasonable delay, and that when sufficient cause is shown, delay should ordinarily be condoned. Similarly, in **B. Madhuri Goud v. B. Damodar Reddy [(2012) 12 SCC 693]**, the Hon'ble Supreme Court observed that the expression "sufficient cause" in section 5 of the Limitation Act is elastic enough to be applied in a manner that serves the ends of justice. The Hon'ble Supreme Court in **Mahadev Govind Gharge & Others v.**

Special Land Acquisition Officer [(2011) 6 SCC 321] reiterated that the provisions of limitation laws are to be construed so as to advance the cause of justice and avoid multiplicity of proceedings. The Gujarat High Court in **Jayvantsinh N. Vaghela v. ITO [2013] 40 taxmann.com 491 (Guj.)** has also held that an appeal should not be dismissed on technical grounds like limitation unless gross negligence or mala fide intention is established on the part of the assessee. In the present case, having regard to the facts and circumstances explained in the assessee's application and the affidavit, and keeping in view the principles laid down in the above judicial pronouncements, we are satisfied that the delay in filing of the present appeal was due to a bona fide and reasonable cause. The delay cannot be said to be deliberate, negligent, or lacking in good faith. If the delay is not condoned, the assessee will suffer irreparable loss, whereas no prejudice will be caused to the Revenue by condonation.

7. Accordingly, in the interests of substantial justice and following the liberal approach laid down by the Hon'ble Supreme Court in **Collector, Land Acquisition v. Mst. Katiji & Others (supra), N. Balakrishnan v. M. Krishnamurthy (supra), and B. Madhuri Goud v. B. Damodar Reddy (supra)**, we condone the delay of 545 days in filing of the present appeal. The application for condonation of delay is, therefore, allowed, and the appeal is admitted for hearing on merits.

<u>On Merits:</u>

8. Before us, the Counsel for the assessee submitted that the present appeal is directed against the order passed by CIT(Appeals), whereby he has

confirmed the disallowance of deduction of Rs. 43,75,000/- claimed under section 35(1)(ii) of the Act. the Counsel for the assessee submitted that the assessee, a closely held private limited company engaged in the business of trading in computer parts and providing IT-enabled services, had during the relevant year made a donation of Rs. 25,00,000/- to *Matrivani Institute of Experimental Research and Education (MIER&E)*, Kolkata—an institution that was, at the time of donation, duly approved under section 35(1)(ii) of the Act by the Central Government. The assessee accordingly claimed the weighted deduction of 175% as permissible under the law. **The Counsel pointed out that the donation was made in July 2015 when the said institution's approval under section 35(1)(ii) was valid and subsisting**. The subsequent notification dated 06.09.2016, by which the Government rescinded the approval of the institution with retrospective effect from 01.04.2004, **was issued much later than the date of donation**. The Counsel argued that, in terms of the Explanation to section 35(1)(ii), the deduction cannot be denied merely on the ground that the approval of the donee institution was withdrawn at a later date. Therefore, the disallowance made by the Assessing Officer on the strength of the retrospective withdrawal of recognition is contrary to the express legislative intent. It was further submitted that during the assessment proceedings, the assessee had furnished complete evidences in support of the donation, including the copy of the donation receipt, the bank statement showing payment through RTGS, and a copy of the notification approving MIER&E under section 35(1)(ii). The Assessing Officer had not disputed the fact of payment or the genuineness of the transaction but merely relied upon the rescission notification and certain findings from a survey action on the institute to hold that the donation was

bogus. The Counsel contended that the Assessing Officer's reliance on the survey report and statements recorded from unrelated parties could not substitute for direct evidence against the assessee. No opportunity of cross-examination was provided, and the addition was made merely on suspicion, without any material linking the assessee to any alleged misuse of donation funds. The Counsel also submitted that **the CIT(Appeals) had passed the appellate order ex parte, without giving the assessee a proper opportunity of being heard. The record of notices in the impugned order itself shows that most of the notices were issued during the COVID-19 pandemic period (from January 2020 to February 2022) and one notice thereafter on 21.04.2023, which unfortunately remained unattended due to the lapse on part of the previous tax consultant**. The assessee was under a bona fide belief that its previous consultant had been handling the appellate proceedings and had even filed an appeal before the Tribunal, as was mentioned in the reply to the penalty notice uploaded by the consultant on 08.08.2023. The Counsel submitted that only upon receipt of a fresh notice dated 13.01.2025 in connection with penalty proceedings did the company discover that the earlier consultant had neither pursued the appeal before NFAC nor filed any appeal before the Tribunal. The assessee then immediately appointed a new consultant and filed the present appeal. The Counsel argued that the non-compliance before the CIT(A) was thus due to genuine and bona fide reasons beyond the assessee's control, and the ex parte dismissal of the appeal resulted in gross violation of the principles of natural justice. The assessee had placed all relevant documents during the assessment stage itself, demonstrating that the donation was made in good faith to a government-approved research institution, and that there was no intention to

evade taxes or furnish inaccurate particulars. The Counsel further relied on the statutory Explanation to section 35(1)(ii), arguing that the same was introduced to protect genuine donors from the adverse consequences of subsequent withdrawal of approval granted to research institutions. The Counsel also cited various judicial precedents, including *CIT v. Chotatingrai Tea & Ors.* [2003] 126 Taxman 399 (SC) and *National Leather Cloth Manufacturing Co. v. Indian Council of Agricultural Research* [2000] 112 Taxman 72 (Bom.), to submit that when donations are made to institutions holding valid approval at the time of payment, deduction cannot be denied merely due to later cancellation.

9. In response, the Ld. DR placed reliance on the observations made by the Assessing Officer and Ld. CIT(Appeals) in their respective orders.

10. We have heard the rival contentions and perused the material on record.

11. We have heard the rival contentions and perused the material on record. It is observed that the learned CIT(Appeals) has passed the impugned order ex parte without affording adequate opportunity of hearing to the assessee. From the record, it is evident that though certain notices were issued by the CIT(Appeals), most of them pertain to the period affected by the COVID-19 pandemic, and the final notice issued on 21.04.2023 remained unattended due to a lapse on the part of the assessee's erstwhile consultant. The assessee has explained that the non-compliance before the CIT(A) was not deliberate but occurred due to a bona fide belief that its earlier consultant was attending to the matter. In our view, the principle of natural justice

mandates that no person should be condemned unheard, and the assessee must be afforded a fair chance to substantiate its claim before any adverse conclusion is drawn. In the present case, since the order of the CIT(A) has been passed without hearing the assessee and without considering the evidences already furnished during assessment proceedings, we are of the considered opinion that the matter requires to be restored to the file of the CIT(A) for de-novo adjudication. We, therefore, set aside the impugned order of the CIT(A) dated 02.06.2023 and remit the matter back to his file with a direction to decide the appeal afresh in accordance with law after providing adequate opportunity of being heard to the assessee. The assessee is also directed to cooperate in the appellate proceedings and furnish all necessary details and evidences in support of its claim.

12. **We make it clear that we have not expressed any opinion on the merits of the addition or disallowance made by the Assessing Officer, and all issues are left open for adjudication by the learned CIT(A) after considering the material placed before him.**

13. The appeal is thus allowed for statistical purposes.

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

This Order pronounced in Open Court on	**06/11/2025**

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad; Dated 06/11/2025
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad