आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1110/PUN/2025
निर्धारण वर्ष / Assessment Year : 2018-19

Apaasso Mali, Flat No. 7, Building E, Ashirwad Garden, Beside Ashirwad Mangal Karyalaya, NDA Road Shivane, Pune-411023 PAN : AIFPM4181M	**Vs.**	ITO, Ward – 11(1), Pune
अपीलार्थी / Appellant		**प्रत्यर्थी / Respondent**

Assessee by :	Shri Suhas Kulkarni
Department by :	Shri A D Kulkarni
Date of hearing :	25-11-2025
Date of Pronouncement :	28-11-2025

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 07.05.2024 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi **["CIT(A)"/"NFAC"]** pertaining to Assessment Year **("AY")** 2018-19.

2. Briefly stated the facts are that the assessee is an individual and engaged in the business of Civil Contractor. For AY 2018-19, the assessee did not file the return of income. During the relevant AY under consideration, the assessee entered into various substantial transactions (the details of which are provided in para 3 of the assessment order), aggregating to Rs.4,80,31,103/-. The case of the assessee was reopened u/s 147 of the Income Tax Act, 1961 **(the "Act")** based on the information received from INSIGHT Portal, the assessee being a non-filer of ITR. Accordingly, notice u/s 148 was issued on 26.03.2022 through ITBA portal. The assessee did not file his return in response to notice issued u/s 148 of the Act. All the other notices u/s 142(1) and reminders sent to the assessee from time to time as well as show cause letter(s) remained uncomplied by the assessee. The Ld. Assessing Officer **("AO")** therefore completed the assessment by making the total addition of

Rs.60,75,423/- u/s 144 r.w.s. 147 r.w.s. 144B of the Act vide order dated 17.03.2023 comprising of the following additions :

i. Variation in respect of issue of contract payment Rs.25,84,320/-
ii. Variation in respect of issue of turnover as per GST return Rs.10,64,000/-
iii. Variation in respect of issue of Time Deposit Rs.21,75,000/-
iv. Variation in respect of Interest income Rs.2,52,103/-

3. Aggrieved, the assessee carried the matter before the Ld. CIT(A)/NFAC. Before the Ld. CIT(A)/NFAC, the appeal was filed with a delay of 248 days. The Ld. CIT(A)/NFAC did not condone the said delay and dismissed the appeal observing that the reasons cited by the assessee do not constitute 'sufficient cause' for not presenting the appeal in time. The relevant findings and observations of the Ld. CIT(A)/NFAC are as under :

> *"5. Decision of the Appellate Authority on condonation of delay in filing the appeal:-*
>
> *As mentioned above, the appeal against the order under section 147r.w.s144r.w.s144Bdated 17-03-2023 served on 17-03-2023. This shows that the delay in filing the appeal as per the provisions of section 249(2) of the Act was 248 days. On perusal of Form No. 35 in column no 14 the appellant regarding condonation of delay submitted the following reasons*
>
> > *"That I, Apaasso Mali, am the Appellant file an application for Condonation of delay.*
> >
> > *That I, the above-named Applicant, am well conversant with the facts stated below.*
> >
> > *That the income tax s 144/147r.w.s144B on the Income Tax Act, 1961 for the assessment year 2018-2019 in my case has been completed by National Faceless Assessment Centre, Delhi by order dated 17/03/2023. That, the time for filing of the appeal before the CIT (Appeals) was to expire on 17/04/2023. That the Applicant, Apaasso Mali had financial crisis in the business, unavoidable family circumstances and also not guided by proper advice in the matter of appeal. Due to the above-mentioned facts, the Applicant could not file the appeal well within the stipulated time That the memo of appeal has been filed on 22/11/2023 before the Honorable CIT (A), National Faceless Appeal*
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> *5.1 The sub-section (3) of Section 249 of the Act regarding power of the CIT (appeals) to condone the delay in filing the appeal is reproduced as under-*
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> > *"The Joint Commissioner (Appeals) or the Commissioner (Appeals) may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period"*
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> *5.2 As per Form no. 35, the appeal is delayed for 248 days. The order under section 147r.w.s144r.w.s1448 was passed on 17-03-2023 which was served upon to appellant on same day 17-03-2023. Accordingly, the due date for filing the appeal to CIT(A) against the same was 17-04-2023, but the appeal has been*

filed on 20-12-2024. The appellant has not given any plausible explanation for such a huge delay of 248 days which justifies the condonation of the delay.

5.3 The appellant's request for condonation of delay in filing the appeal is devoid of merit and the delay caused in filing the appeal can't be condoned for following reasons:-

I. *The appellant has failed to provide a reasonable and bona fide explanation for the delay Mere ignorance of assessment proceedings or unawareness of notices uploaded on the income tax portal does not constitute a valid ground for condonation. It is a well-settled legal principle that taxpayers are expected to exercise due diligence in monitoring their tax matters.*

II. *The notices were issued through the Income Tax Department's web portal, the designated mode of communication under the faceless assessment scheme. As per Section 282 of the Income Tax Act, read with Rule 127A of the Income Tax Rules, electronic communication through the portal constitutes valid service. The appellant's claim of unawareness does not hold merit, as taxpayers have a duty to monitor their online accounts for official communications.*

III. *The faceless assessment scheme, introduced under Section 1448 of the Income Tax Act, does not require individual intimation to taxpayers regarding the transfer of jurisdiction to the National Faceless Assessment Centre (NFAC) All taxpayers are expected to be aware of statutory and procedural changes. The appellant's contention that no separate intimation was received is misplaced and legally untenable.*

IV. *The assessment proceedings were conducted in accordance with due process, and the appellant had ample opportunity to respond to the notices issued. The non-response to NFAC notices is solely attributable to the appellant's failure to monitor the portal, which cannot be a basis to challenge the assessment. The department cannot be held responsible for the appellant's lack of diligence.*

V. *The appellant's claim of unawareness appears to be an afterthought, conveniently raised to justify the delay. There is no evidence that unavoidable circumstances beyond the appellant's control prevented them from filing the appeal on time. The timing of the appeal, seemingly prompted only after coercive recovery measures were initiated, suggests a deliberate attempt to delay proceedings.*

VI. *The appellant has not provided credible evidence of extraordinary circumstances that prevented them from filing the appeal within the prescribed timeline. Delay of 248 days is substantial and cannot be brushed aside as a minor lapse. For such an inordinate delay, the appellant must demonstrate unavoidable hindrances, which they have failed to establish.*

VII. *The principle of limitation serves to uphold the finality of proceedings, ensuring judicial discipline and administrative efficiency. Condoning the delay without reasonable justification would dilute the sanctity of these timelines and encourage non-compliance.*

VIII. *Allowing condonation of such a substantial delay without valid justification would set a precedent detrimental to the efficiency of the tax administration and the interests of revenue.*

IX. *Judicial precedents underscore that while equity and natural justice must be observed, they cannot be stretched to accommodate inordinate delays caused by negligence or mismanagement. Courts have consistently held that condonation of delay is an exception rather than the rule. In this instance, the delay is primarily attributable to internal mismanagement and lack of diligence on the part of the appellant, not factors beyond their control.*

5.4 There is legal maxim- "Vigilantibus non dormientibus Jura subveniunt" meaning that law assists those who are vigilant with their rights and not those who sleep thereupon. It is trite that filing of an appeal or an application under any Act is a right provided by the concerned statute. These rights carry certain obligations including adhering to the time limit prescribed in the statute for filing of such an appeal or application. Sometimes the relevant statute carves out exceptions by granting the competent authority/forum a power to entertain an appeal or application beyond the prescribed period on sufficient cause. It is in the hue of such an express authorization that the concerned authority/forum can exercise its discretion and condone the delay, if satisfied with the reasonableness of the cause in late presentation. In the context of Income-tax Act, 1961, although section 249(2) of the Act requires the filing of an appeal before the CIT(A) within 30 days, sub-section (3) empowers the CIT(A) to admit an appeal after the expiry of the said period if he is satisfied that the appellant had sufficient cause for not presenting the appeal within the period. As discussed in the preceding para, the present appellant has not been able to show any reasonable cause for filing the appeal late by248days. From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s 249(2). Thus, this clearly is a case of laches and is directly the result of deliberate inaction on the part of the appellant. Therefore, the law cannot come to its rescue by condoning the delay for such inaction on the part of the appellant.

5.5 In a comparable set of facts and circumstances, the Hon'ble Supreme Court in their judgment dated 16-12-2021 in the case of MajjiSannemma @ Sanyasirao versus Reddy Sridevi&Ors.inCivil Appeal No.7696 of 2021 has observed as under-

> *6.2 "We have gone through rough the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously*
>
> *7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under.*
>
> *7.1in the case of Ramlal, Motilal and Chhotelal(supra), it is observed and held as under.*
>
> *"In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be lightheartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chattappan, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood, the words sufficient*

cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

7.2 in the case of P.K. Ramachandran(supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

7.3 In the case of PundlikJalamPatil(supra), it is observed as under

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty: some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicaeut sit finis litium, that is, the interest of the State requires that there should be end to litigation but at the same timelaws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatorytactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

7.4 In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It isobserved that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of Pundlik JalamPatil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos. 1 and 2 herein appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane.Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos. 1 and 2 herein - original defendants. Impugned

order passed by the High Court is unsustainable both, on law as well as on facts.

9.In view of the above and for the reasons stated above, the present Appeal is allowed. The impugned order dated 16.09.2021 passed by the High Court condoning the delay of 1011 days in preferring the Second Appeal by respondent Nos. 1 and 2 herein is hereby quashed and set aside. Consequently. Second Appeal No.331 of 2021 preferred by respondent Nos. 1 and 2 herein stands dismissed on the ground of delay. The present Appeal is accordingly allowed. However, there shall be no order as to costs."

6. In view of the above facts and circumstances, the reasons advanced by the assessee for delay in filing the appeal are held to be insufficient, unsubstantiated, unreasonable and hence unacceptable. The appellant has failed to demonstrate reasonable cause or exceptional circumstances to warrant condoning the delay. Therefore, the condonation of delay in filing the appeal is denied in the interest of justice, equity, and procedural discipline.

7. Having regard to above discussion and legal position, the delay of 248 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown u/s 249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s 249(2) of the Income Tax Act, 1961r.w.s.5 of Limitation Act and hence the appeal sought to be instituted belatedly is hereby rejected.

8. In the result, as delay in filing of appeal is not condoned, the appeal is not admitted and is rejected accordingly."

4. Dissatisfied, the assessee is in appeal before the Tribunal raising the following grounds of appeal:

*"**Ground No. 1:***

On the facts and circumstances of the case, the learned CIT(A) erred in law and on facts in dismissing the appeal in limine without considering the merits of the case by not condoning the delay of 248 days in filing the appeal, despite the appellant providing sufficient cause for the delay.

Ground No. 2:

On the facts and circumstances of the case, the order passed by the Assessing Officer u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 is bad in law and against the facts and circumstances of the case.

Ground No.3:

3.1 On the facts and circumstances of the case, the Ld. CIT(A) erred in rejecting the appeal of the assessee without comprehensive consideration of the substantive grounds challenging the original assessment order.

3.2 On the facts and circumstances of the case, the Ld. CIT(A) ought to have appreciated that the appellant is from small town at Sangli in Maharashtra and not very techno savvy to understand faceless regime of income tax assessment. The scenario justifies condonation of delay.

3.3 On the facts and circumstances of the case, the Id. CIT(A) erred in Conducting proceedings ex-parte, not providing adequate and meaningful opportunities to present the case, relying on unverified information without giving an opportunity to rebut.

Ground No. 4:

4.1 On the facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in making an addition of 2 25,84,320/- by applying a profit rate of 8%, instead of computing the profit at the prescribed rate of 6% under Section 44AD of the Income Tax Act.

4.2 On the facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in treating an amount of ₹ 18,73,540/- as business income based on the turnover disclosed in the Service Tax Return and ignoring the fact that this results in a double addition. The LD Assessing Officer failed to appreciate that turnover declared in service tax returns cannot be over and above the turnover considered for taxation based on books /or other record.

4.3 On the facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in treating the amount of ₹21,75,000/- related to time deposits as unexplained investment under Section 69 of the Income Tax Act ignoring the fact that these deposits were made through the sweep account facility linked to the current account of the Appellant.

4.4 On the facts and in the circumstances of the case and in law, the Learned Assessing Officer has erred in not allowing credit for Tax Deducted at Source (TDS) amounting to 3,48,250/-, which was deducted from the income of the Appellant.

Ground No.5

5.1 On the facts and circumstances of the case the LD AO erred in invoking section 69 to tax undisclosed investments when the appellant is assessed under section 44AD on presumptive basis.

5.2 On the facts and circumstances of the case the LD AO erred in levying tax at special rate U/s 115BBE.

Ground No. 6

6.1 On the facts and circumstances of the case the LD AO erred in initiating penalty u/s 270A as well as 272A(1)(d) and u/s 271AAC of income tax act.

6.2 On the facts and circumstances of the case the LD AO erred in levying interest under sections 234A, 234B, 234C, 234D and fee u/s 234F for default in furnishing return of income are.

Ground No. 7

The Appellant hereby reserves the right to add, amend, alter, delete, or raise any additional ground/s on or before the date of hearing."

5. The Ld. AR submitted that the assessee had a reasonable/sufficient cause for not being able to file the appeal within the statutory prescribed time limit. The Ld. AR further submitted that the assessee was compelled to cease his business activities from FY 2020-21 onwards due to operational difficulties and disruption in business caused by Covid-19 pandemic as well as the medical condition of his mother. He submitted that the assessee along with his family has shifted to Kolhapur from Pune and his only source of income is from agricultural activity. Post closing of his business, the assessee has not engaged any professional tax consultant. As the assessee was unfamiliar with the e-proceedings and digital communication protocols of the Income Tax

Department, he did not regularly access his registered email account linked to his PAN and consequently, the various notices issued remained unattended. The delay was therefore neither intentional nor attributable to any lack of bonafide or negligence on the part of the assessee. In support thereof, the Ld. Counsel for the assessee placed on record the affidavit of assessee. The Ld. AR further submitted that the assessee has a strong case on merits and given an opportunity the assessee is in a position to substantiate his case by filing all the requisite details/documents before the Ld. CIT(A)/NFAC. He, therefore, submitted that, in the interest of justice, the matter may be restored to the file of the Ld.CIT(A)/NFAC with a direction to condone the delay and decide the appeal on merit, after affording an opportunity of hearing to the assessee.

6. The Ld. DR, on the other hand, relied on the order of the Ld. CIT(A)/ NFAC.

7. We have heard the rival arguments made by both the sides and perused the material available on record. We find that the Ld. CIT(A)/NFAC has dismissed the appeal of the assessee being barred by limitation, the reasons of which have already been reproduced in the preceding paragraph. Before us, the Ld. AR placed on record the affidavit of the assessee stating the aforementioned reasons for delay in filing the appeal before the Ld. CIT(A)/NFAC.

8. We find some force in the arguments of the Ld. AR. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) has held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

9. We find recently the Hon’ble Supreme Court in the case of Inder Singh Vs. The State of Madhya Pradesh reported in 2025 LiveLaw (SC) 339 has held as under:

> *"14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation."*

10. In light of the above factual matrix of the case and the decision(s) of the Hon'ble Supreme Court (supra), we deem it proper, in the interest of justice, to set aside the impugned order of the CIT(A)/NFAC and restore the matter back to his file with a direction to condone the delay and decide the appeal on merit(s) as per fact and law after giving due opportunity of being heard to the parties. Needless to say, the assessee shall appear and make submissions on the appointed date without seeking adjournment under any pretext unless required for a sufficient cause, failing which the Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open court on 28th November, 2025.

Sd/-	Sd/-
(R.K. Panda)	(Astha Chandra)
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 28th November, 2025.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

सहायक पंजीकार/ Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune