

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं सुश्री पद्मावति यस, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2189/Chny/2025
निर्धारण वर्ष /Assessment Year: 2017-18

Syed Nazeer Syed Fayaz,
3/30, Mysore Road,
Talavadi S.O., Talavadi,
Erode – 638 461.
PAN: DOQPS 4080R

The Income Tax Officer,
Vs. Ward-2(1),
Erode.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Respondent by

: Mr. S. Bhupendran, Advocate
: Ms. Babitha, JCIT

सुनवाई की तारीख/Date of Hearing

: 11.12.2025

घोषणा की तारीख /Date of Pronouncement

: 17.12.2025

आदेश / ORDER

PER PADMAVATHY.S, A.M:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)/Addl./JCIT(Appeals)-2, Pune, (in short "FAA") passed u/s. 250 of the Income Tax Act, 1961 (in short "the Act") dated 28.07.2025 for Assessment Year (AY) 2017-18. The assessee raised the following grounds of appeal:

"1) The Impugned Order is bad, erroneous and unsustainable in law.

2) The Learned First Appellate Authority erred in not considering the Written Submissions, Affidavit and explanation tendered regarding the delay caused in filing the appeal.

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3) Without prejudice, the Learned First Appellate Authority erred in not considering that the Appellant was all along prosecuting an alternative remedy of rectification followed by first and second appeals preferred against the rectification order, constituting reasonable cause in filing the present appeal belatedly.

4) Without prejudice, the Learned First Appellate Authority further erred in not considering that the provisions of the Limitation Act, 1963, especially Section 14, which encompasses similar situation where the litigant spends time in alternative forum in good faith, more particularly when the Appellant assailed the Reassessment Order by filing Rectification Application within 30 days, being time limit to have filed the first appeal, thereby taking a narrow, hyper-technical view.

5) Without prejudice, the Learned First Appellate Authority, despite reproducing the chart drawn by the Appellant narrating the sequence of events causing the delay, erred in failing to consider the same holistically, given the fact that Covid Period formed a major part in the period of delay in filing first appeal.”

2. The assessee is an individual and filed a return of income for A.Y 2017-18 on 29.03.2018 admitting an income of Rs.3,20,150/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The A.O during the course of assessment noticed that the assessee has deposited cash during the course of demonetization period in Specified Bank Notes (SBNs) to the tune of Rs. 8,99,500/-. The assessee submitted before the A.O that sales arising from trading activities are the source for cash deposited and in this regard submitted the sales extract. The A.O however rejected the submissions stating that as per the notification of the Central Government Rs. 500/- and Rs. 1,000/- seized to be legal tender and therefore the cash deposited by the assessee in SBNs is to be treated as unexplained. The A.O accordingly made an addition in the hands of the assessee. Aggrieved, the assessee filed further before the FAA.

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I am the Appellant herein and am well acquainted with the facts of the case pertaining to the belated filing of the above appeal before the Commissioner of Income Tax (Appeals) for the above assessment year 2017-18 arising from the order of the Assessing Officer, National Faceless Assessment Centre, Delhi dated 16-12-2019, competent to swear to this affidavit.

That the time for filing of the appeal before the CIT(Appeals) was to expire on 15-01-2020.

That I have pursued the rectification remedy said assessment order on 06.01.2020 against which the appeal has been filed before the Honorable Income Tax Appellate Tribunal and is pending and therefore the appeal could not be filed well within the stipulated time.

Accordingly, it is prayed that the delay of 1121 days (One thousand one hundred and twenty one days only) in filing the above appeal for the assessment year 2017-18 may be condoned and it is pleaded for adjudication of issues forming part of statutory Form No.35 on merits in the interest of justice.

Solemnly and sincerely affirmed
at Erode this the 09th day of
February 2023 and signed his
name in my presence.

x
BEFORE ME

(Signature)
ADVOCATE - Erode & FTB TB
A. RAJENDRAN, B.Sc., B.L.
Advocate & Notary Public,
2, Sampath Nagar Road,
ERODE - 638 011.
Book No. *9640* - Serial No. *9640*



**BEFORE THE ADDITIONAL JOINT COMMISSIONER OF INCOME TAX
(APPEALS)-2, PUNE**

Syed Nazeer Syed Fayaz - PAN: **DOQPS4080R**
Assessment Year: **2017-18**
Appeal Number: **NFAC/2016-17/10208103**
Date of Hearing: **03/07/2025**

- Appellant
01/07/2025

FURTHER WRITTEN SUBMISSIONS

In respect of the delay caused in filing the present appeal, it is submitted that the Appellant at the time of instituting the present appeal itself, has filed an Affidavit explaining that he was **taking other remedies contemplated under the Act** and that the **entire delay was caused in that recourse** and that the Appellant was **not indolent or negligent in his approach**. Now, for the sake of convenience and reference, the Appellant is giving **Important-Date Chart** to show and **highlight different actions taken by the Appellant during the delay period:**

Dates	Events
16/12/2019	Impugned Assessment Order was passed
15/01/2020	Time Limit to have filed the present appeal
06/01/2020	Rectification Application was filed against Assessment Order
10/02/2020	Rectification Order was passed
11/03/2020	First Appeal was filed against Rectification Order
15/03/2020 to 29/05/2022	Covid Period - Extension granted by the Supreme Court in Sua Moto Civil Writ Petition No. 3 of 2020
30/05/2022 to 05/09/2022	Prosecuting remedy in First Appeal filed and pending against the Rectification Order
06/09/2022	First Appeal Order passed, dismissing the case
13/02/2023	Second Appeal filed before Income Tax Appellate Tribunal against First Appeal Order passed

It may be noted that on receipt of the First Appellate Order on 06/09/2022, the Appellant was initially advised to file **Second Appeal** before the ITAT. Then, later, when another consultant was consulted regarding the endless litigation faced by the Appellant, it was advised that the **Original Assessment Order had to be appealed** against in order to get full relief and that **what the Appellant was doing all along was only in connection with the Rectification Order passed in response to the Rectification Application filed.**

It was only then the Appellant realized and took immediate steps and filed **first appeal** against the **Assessment Order as well as filed second appeal** before the ITAT against the **first appellate order**. Thus, it may be noted that the period after 06/09/2022 till 11/02/2023 was caused due to divergent advises given by different tax consultants and the time taken by the Appellant to assimilate the advises and take concrete steps to pursue both of them.

Hence, the Appellant sincerely prays that the delay, though seeming big in number, is not due to indolent or negligent conduct of the Appellant rather due to parallel steps being taken, even starting from a time point, where the time limit to file first appeal against the Assessment Order had not even lapsed. Thus, a liberal view may be taken and the appeal be admitted and heard on merits. Justice be rendered.

4. The FAA however did not accept the submissions of the assessee and dismissed the appeal stating that there was no sufficient cause demonstrated by the assessee to condone the delay. The assessee is in appeal before the Tribunal against the order of the FAA.

5. We have heard the parties and perused the materials available on record. From the perusal of the condonation petition filed by the assessee before the FAA, we notice that the assessee filed a rectification petition before the AO and has proceeded to pursue the issue based on the rejection of rectification by the AO up to Tribunal level. It is further noticed that the assessee was subsequently advised that the appeal against the order of the AO passed u/s.143(3) needs to be appealed separately and filed the appeal before FAA accordingly. From the perusal of these facts, we see merit in the contention that the assessee was exploring alternate remedy and was not advised properly that the appeal is to be filed against the assessment order and rectification order separately. Before proceeding further, we will look at some of the legal dictum laid down with regard to the issue of condonation of delay. The Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) while considering the issue of condonation of delay, laid down certain principles as reproduced here under :-

“(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

(2) Refusing to condone delay can result in a meritorious matter being thrown 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.

(3) ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay,

every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the 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 nondeliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. In the present case, as already mentioned the assessee has pursued the appeal against the rectification order up to Tribunal level, and therefore there is no reason for the assessee to not to file appeal against the order of the AO before the FAA. Therefore in our view the assessee has no reason to delay the filing of appeal before FAA except the bonafide belief that there is no requirement to file a separate appeal against the order of assessment when the order of rectification of the assessment order is appeal against. This fact is substantiated by the details furnished in the affidavit.

7. Now the next question is whether the delay of 1123 days which as per the contentions of the revenue is inordinate and excessive, can not be condoned. We have to examine delay as excessive or inordinate based on whether there is a reasonable cause for not filing the appeal on time by the assessee and in our view when there is a reasonable cause, the period of delay may not be relevant factor. The Madras High Court in the case of *CIT v. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596)* held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a pragmatic approach and the Court should exercise their

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discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause” the principle of advancing substantial justice is of prime importance and the expression “sufficient cause” should receive a liberal construction. Therefore, this Judgment of the Madras High Court (supra) clearly says that in order to advance substantial justice which is of prime importance, the expression “sufficient cause” should receive a liberal construction.

8. Considering the above judicial precedence and the facts peculiar to the assessee, we are of the view that the delay in filing the appeal before the FAA is not deliberate and that the bonafide belief of the assessee is sufficient cause for not filing the appeal within the prescribed time limit. Accordingly we direct the FAA to condone the delay in filing the appeal before FAA and admit the appeal for adjudication. The FAA has dismissed appeal on the ground of delay and has not examined the impugned issue on merits. Therefore we deem it to remit the appeal back to the FAA with further direction to examine the impugned issue on merits by calling for relevant details as required to decide the issue in accordance with law. It is ordered accordingly.

9. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced on 17th day of December, 2025 at Chennai.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-
(पद्मव्रति यस)
(Padmavathy.S)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 17th December, 2025.

EDN, Sr. P.S

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF