

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

&

SHRI MAKARAND VASANT MAHADEOKAR (ACCOUNTANT MEMBER)

I.T.A. No. 4614/Mum/2025

Assessment Year: 2017-18

Swapngandha Sanjay Parab 9/657 Audumbad, Abhudaya Nagar Kalachowki, Cottongreen Mumbai - 400023 [PAN: AMSPP6908L]	Vs.	Ward – 42(3)(4), Mumbai
(Appellant)		(Respondent)

Assessee by	None
Revenue by	Ms. Kavitha Kaushik, Sr. D/R
Date of Hearing	09.12.2025
Date of Pronouncement	31.12.2025

ORDER

Per Smt. Beena Pillai, JM:

Present appeal filed by assessee arises out of order dated 30/03/2025 passed by NFAC, Delhi [hereinafter “the Ld. CIT(A)”] for assessment year 2017-18 on following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, The CIT(A), hereinafter referred to as the Ld. CIT(A) has levied Penalty u/s. 271AAC of Rs. 3,44,040/-. The penalty may please be deleted.

2. All the Grounds of Appeal are without prejudice to each other.

3. The assessee craves leave to add, alter, and amend the grounds of appeal at the time of hearing.”

2. At the outset, Ld.AR submitted that, appeal has been filed by assessee before this *Tribunal* with a delay of 51 days. The assessee has also furnished an application seeking condonation of delay wherein it is submitted that, assessee was in continue follow-up with the Ld.AR. however, due to year-end compliances and further overlapping professional obligations an inadvertent mistake occurred on behalf of the authorized representative in finalizing the

appeal filed before this *Tribunal*. It is submitted that, there is no deliberate intention to cause any delay. The Ld.AR has thus prayed for the appeal to be decided on merits of the case.

On the contrary, the Ld.DR relied on the orders passed by authorities below, however, could not controvert the submission of Ld.AR.

We have perused the submissions advanced by both sides in light of the records placed before us.

3. Admittedly, the Ld.DR could not controvert the submissions filed by assessee and the arguments advanced by Ld.AR to substantiate the delay caused in filing the appeal before Ld.CIT(A). It is noted that assessee, under genuine circumstances, could not respond to the notices issued by revenue during the assessment proceedings.

3.1. It is noted that there is no *malafide* intention on behalf of assessee in not filing the present appeal before this *Tribunal*, within the period of limitation. Nothing to establish any such intention has been filed by the revenue before this *Tribunal*. In our opinion there was sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

3.2. We refer to the *Third Member* decision of *Hon'ble Chennai, ITAT* in the case of *People Education & Economic Development Society Vs/ ITO* reported in 100 ITD 87 (TM) (Chen), wherein it was held that "*when substantial justice and technical consultation 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 non-deliberate delay".

3.3. It is also necessary to ascertain whether there was excessive or inordinate delay in the present facts of the case. *Hon'ble Madras High Court* in the case of *CIT vs. K.S.P. Shanmugavel Nadai and Ors.* (153 ITR 596) considered a situation of condonation of delay and held that where there exists a reasonable cause, period of delay may not be a relevant factor. *Hon'ble Madras High Court* relying on this principle had condoned the delay of nearly 21 years.

3.4. We also refer to the decision of *Co-ordinate Bench* of this Tribunal in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT) (277 ITR 1)* wherein this *Tribunal* has condoned the delay of 180 days when the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It was noted that, the revenue had not file any counter-affidavit opposing the application of the assessee for condonation of delay. The *Hon'ble Supreme Court* under similar circumstances had noted in case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi (AIR 1978 SC 537)* held that non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause to condone the delay.

3.5. In the present facts of the case, we note that no such affidavit has been furnished by the revenue countering the condonation application of the assessee. At this juncture, we also take assistance and support from the observation of *Justice Krishna Iyer* wherein he has quoted at various occasion while dealing with technicalities that "*any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail*

over procedural technicalities". Similar is the observation by Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji & Ors., reported in (1987) 167 ITR 471.

4. Based on the above discussions, in the interest of justice, we condone the delay in filing the present appeal before this Tribunal.

5. On merits, it is noted that, before Ld.CIT(A), assessee could not file proper submissions, though various notices were issued. The Ld.CIT(A), therefore, confirmed the penalty based on the statement of facts furnished in Form 35. In the interest of justice, we are of the view that the said appeal has to be remitted back to Ld.CIT(A) to consider the claim of assessee in accordance with law having regards to the submissions of assessee. Needless to say that, proper opportunity of being heard must be granted to assessee.

Accordingly, grounds raised by assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 31/12/2025

Sd/-

**(MAKARAND VASANT MAHADEOKAR)
Accountant Member**

Sd/-

**(BEENAPILLAI)
Judicial Member**

Mumbai
Dated: 31/12/2025
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai