

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'बी' बेंच, हैदराबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad "B" Bench, Hyderabad

श्री मंजूनाथ जी, माननीय लेखा सदस्य एवं श्री रवीश सूद, माननीय न्यायिक सदस्य
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.802/Hyd/2025
(निर्धारण वर्ष/ Assessment Year: 2018-19)

Mahathi Engineering Industries Private Limited, Hyderabad. PAN : AAJCM7918D	Vs.	The Deputy Commissioner of Income Tax, Circle - 5(1), Hyderabad.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Mohd. Afzal, Advocate.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Narendra Naik, CIT-DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	20.11.2025
घोषणा की तारीख/ Date of Pronouncement	:	09.01.2026

ORDER

PER MANJUNATHA G., A.M :

This appeal filed by the assessee is directed against the order of the learned Principal Commissioner of Income Tax (Appeals), Hyderabad - 4, dated 14.03.2024 passed under Section 263 of

Income Tax Act, 1961 (for short “the Act”) and pertains to the assessment year 2018-19. The grounds raised by the assessee read as under :

“1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Principal Commissioner erred in assuming that the assessee failed to substantiate the reason behind the issuance of shares to Sri.Sayeed Ahmed Omar Burraiyah with necessary documentary evidence, therefore, further erred in setting aside the order u/s 143(3) of the IT Act.

3. The learned Ld. Pr. CIT ought to have appreciated that during the course of assessment proceedings, the AO of NFAC issued show cause notice/draft assessment order proposing to assess the income at Rs.15,23,75,560/- by making an addition of Rs.15,22,98,920/-, however, after considering the explanation Rs. 0 3 Rs. 0 Grounds of Appeal and documentary evidence submitted in respect of investment made by Sri.Sayeed Ahmed Omar Burraiyah, income returned was accepted. Therefore, the learned Pr.CIT erred in assuming that the AO NFAC failed to verify the taxability of Rs.15,80,37,260/- and further erred in setting aside assessment made by the AO of NFAC.

4. The learned Ld. Pr. CIT considering the documentary evidence submitted and collected by the AO should have clearly mentioned what is the deficit in the enquiries made and should have himself made a part of enquiry to prove the failure of the AO of NFAC, therefore, erred setting aside the assessment made by the AO of NFAC.

5. The learned Ld. Pr. CIT erred in assuming that the AO has not properly verified the information available in this case without mentioning which of the document submitted by the AO had not properly verified and what sort of enquiries should have been made to assume the order as prejudicial to the interest of Revenue. Therefore, erred in setting aside the assessment order made by the A.O. of NFAC.

6. The learned Ld. Pr. CIT has not proved that how the order u/s 143(3) is erroneous and prejudicial to the interests of revenue, as the observation of the Pr.CIT is only on surmises and conjectures, without brining any fresh material on record in respect of assuming the order as prejudicial and erroneous. Therefore, erred in setting aside the assessment order made by the A.O. of NFAC.

7. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

2. At the outset, we find that, there is a delay of 360 days in the appeal filed by the assessee for which a petition for condonation of delay, along with an affidavit explaining the reasons, have been filed. The learned counsel for the assessee, Shri Mohd. Afzal, Advocate, referring to the petition filed by the assessee, submitted that, the Ld. Pr. CIT has passed an order under Section 263 of the Act on 14.03.2024, and in the ordinary course, the assessee should have been filed the appeal before the Tribunal on or before 13.05.2024. However, the appeal has been filed on 08.05.2025 with a delay of 360 days. The reasons for the delay in filing of the appeal are due to the circumstances beyond the control of the assessee, because the assessee company has stopped its business activity in the Financial Year 2019-20, and further, the Managing Director of the assessee company has represented before the Ld. Pr. CIT with the help of an Accountant. However, he could not get a proper advice from his counsel. Further, the counsel was of the opinion that in the revised assessment also, the assessee can contest the issue before the Ld. Pr. CIT, and therefore, there is no

need of challenging the order of the Ld. Pr. CIT before the Tribunal at that point of time. However, in the order under Section 143(3) read with Section 263 of the Act, the A.O. has taken the same opinion as considered by the Ld. Pr. CIT and made an addition, and only after receipt of the order, the assessee consulted another advocate and was advised to file an appeal against the order passed by the Ld. Pr. CIT under Section 263 of the Act, which caused the delay. However, the said delay is not on account of deliberate attempt made by the assessee for not continuing the proceedings, but purely because of incorrect advice given by the counsel. Therefore, he submitted that, the delay in filing of the appeal should be condoned. In this regard, he relied upon the decision of N. Balakrishnan Vs. M. Krishnamurthy (1998) (7) SCC 123.

3. The Ld. CIT-DR for the Revenue, Dr. Narendra Kumar Naik, on the other hand, strongly opposed the petition filed by the assessee for condonation of delay and argued that, the reasons given by the assessee do not come under 'sufficient cause' for considering huge delay of 360 days in filing the appeal. The Ld. CIT-DR, further referring to the petition filed by the assessee for condonation of

delay, submitted that, as agreed by the assessee himself, the present appeal has been filed after receipt of order from the A.O. under Section 143(3) read with Section 263 of the Act. From the above, it is very clear that the assessee has chosen to remain silent till the A.O. has passed the order, and only after the A.O. has passed the order, has taken steps to file the appeal before the Tribunal against the order of the Ld. Pr. CIT passed under Section 263 of the Act, which clearly shows the intent of the assessee not to challenge the order of the Ld. Pr. CIT and only contest the issue before the A.O. Since the assessee did not get favorable order from the A.O., it has decided to challenge the order passed by the Ld. Pr. CIT under Section 263 of the Act. Therefore, the reasons given by the assessee that on account of wrong advice given by the counsel is not backed by any evidence going by the facts of the present case. Therefore, he submitted that, the delay of the appeal should not be condoned.

4. We have heard both parties and considered the relevant reasons given by the assessee in a petition filed for condonation of delay of 360 days in filing of the appeal before the Tribunal. Admittedly, the Ld. Pr. CIT has passed the order under Section

263 of the Act on 14.03.2024, and in the ordinary course, the assessee should have filed the appeal before the Tribunal on or before 13.05.2024. However, the appeal has been filed on 08.05.2025 with a delay of 360 days. The assessee attributed the delay due to incorrect advice given by the counsel, who has represented the case before the Ld. Pr. CIT. According to the assessee, the counsel, who represented the case before the Ld. Pr. CIT had given opinion that in the consequential assessment proceedings, the assessee can contest the issue as the transaction is supported by the relevant evidences and therefore, there is no need to challenge the order of the Ld. Pr. CIT passed under Section 263 of the Act. Due to this reason, the assessee could not file the appeal on or before the due date, and only after the A.O. passed the order under Section 143(3) read with Section 263 of the Act, the assessee has consulted an advocate, who has advised to file the appeal against the order passed by the Ld. Pr. CIT under Section 263 of the Act. Therefore, the assessee contended that, the delay is mainly on account of incorrect advice given by the counsel not to contest the order passed by the Ld. Pr. CIT, but not because of deliberate attempt to delay the proceedings or to derive any

undue benefit. Therefore, pleaded that, the delay may be condoned.

5. We have given our thoughtful consideration to the reasons given by the assessee in their petition filed for condonation of delay and upon careful consideration of relevant reasons, we find that, the assessee has chosen to remain silent when the Ld. Pr. CIT has passed the order under Section 263 of the Act on the ground that, it can contest the issue raised by the Ld. Pr. CIT before the A.O. during the consequential assessment proceedings. Further, when the assessee did not get favorable order from the A.O. during the consequential assessment proceedings, it has decided to challenge the order passed by the Ld. Pr. CIT under Section 263 of the Act before the Tribunal. From the above conduct of the assessee, it appears that, the assessee has taken a conscious decision not to continue the proceedings initiated by the Ld. Pr. CIT under Section 263 of the Act by filing an appeal before the Tribunal. Therefore, in our considered view, the reasons given by the assessee that the counsel, who represented the case before the Ld. Pr. CIT had given wrong advice for not filing the appeal, is only an afterthought to circumvent the delay caused in filing the

appeal. Therefore, in our considered view, the same cannot be considered as 'sufficient cause' for condoning the huge delay of 360 days in filing the appeal.

6. Further, going by the facts on record, it was the assessee, who decided to remain silent when the order was passed by the Ld. Pr. CIT, and only when the assessee did not get favorable orders from the A.O., has decided to challenge the order before the Tribunal. Therefore, in our considered view, once the assessee has taken the decision not to challenge the order passed by the Ld. Pr. CIT, and decided to go to the A.O. to represent its case with relevant evidences, then the assessee cannot challenge the order passed by the Ld. Pr. CIT under Section 263 of the Act, once the A.O. has passed the consequential order under Section 143(3) read with Section 263 of the Act. Further, had the assessee been little cautious about its conduct, it could have avoided the present circumstances because, the proceedings initiated under Section 263 of the Act are independent and different from the assessment proceedings. Even if the assessee is having a strong case on merits before the A.O., still the assessee can very well challenge the order passed by the Ld. Pr. CIT along with simultaneous proceedings

before the A.O. Once the assessee chooses not to file the appeal against the order passed by the Ld. Pr. CIT, till the A.O. passes the consequential assessment order under Section 143(3) read with Section 263 of the Act, in our considered view, then the assessee will lose the right given by the statute for filing of appeal against the order passed by the Ld. Pr. CIT under Section 263 of the Act. Therefore, the attempt made by the assessee for filing the appeal after the A.O. has passed the order under Section 143(3) read with Section 263 of the Act is only an afterthought, but not a case of wrong advice or incorrect advice given by the counsel, who represent the case. Therefore, in our considered view, the reasons given by the assessee in the petition filed for condonation of delay are not sufficient to condone the huge delay of 360 days, and thus, for this reason, we cannot condone the delay in filing the appeal.

7. At this stage, it is relevant to consider the Judgment of Hon'ble Supreme Court in the case of Pathapati Subbareddy (died) repled. by his L.Rs & Ors. vs., The Special Deputy Collector-(LA) in Special Leave Petition (Civil) No.31248 of 2018 vide order dated 08.04.2024 wherein the Hon'ble Supreme Court after considering

the provisions of sec.3(1) Secs.4 to 24 of the Limitation Act has refused to condone the delay and dismissed the SLP filed by the assessee and uphold the order of the Hon'ble High Court Andhra Pradesh High Court in dismissing the appeal on account of delay. The Hon'ble Supreme Court while dismissing the SLP, after considering the various judicial precedents on the subject matter of condonation of delay, noted that, *“where a litigant could not explain the ‘sufficient cause’ which means adequate, enough reasons which prevented him to approach the Court within the period of limitation and could not properly, satisfactorily and convincingly explained the delay to the Court/Tribunal, Court’s has no power to condone such delays”*. The Hon'ble Supreme Court further noted that, *“the statutory provisions under Limitation Act may cause hardship or inconvenience to a particular party, but, the Court has no choice, but, to enforce it giving full effect to the same by quoting the legal maxim dura lex sed lex which means “the law is hard but it is the law”, stands attracted when there were negligence/failure to exercise due diligence etc., and accordingly dismissed the SLP of the appellants in the aforesaid case”*.

8. Further, the Hon'ble Supreme Court yet in an another case Balwant Singh (Dead) vs., Jagdish Singh & Ors. in Civil Appeal

No.1166/2006 reported in [2010] 8 SCC 685 in para-16 very clearly held as under :

“16. Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. The larger benches as well as equi-benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications. Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.”

9. We further refer to the decision of Mumbai Bench of the Tribunal in ITA No.7115/Mum/2018 dated 29.11.2019 in the case of Aneeka Universal Pvt. Ltd. Vs. Pr. CIT-9, Mumbai, wherein the Coordinate Bench of the Tribunal has held as under :

“5. We have heard both the parties, perused the material available on record and had gone through orders of the authorities below along with judicial decisions cited by both the parties. The Tribunal has powers to condone the delay in filing appeal after the expiry of the relevant period referred to in sub section (3) or sub- section (4) of section 253 of the Income-tax Act, 1961, if it is satisfied that there was sufficient cause for not presenting the appeal within that period. The words sufficient cause has not been defined under the Act, but various courts have interpreted to mean that there are reasons beyond the control of the assessee, which

prevented the assessee filing appeal within the time prescribed under the Act, are considered to be reasonable cause. Various courts have considered the reasons advanced by the assessee for not filing appeal within the time allowed under the Act, like ill-health of the concerned assessee or his counsel, medical emergency, travel abroad or any other places, during the relevant period or some other emergency situations, which prevented the assessee to attend the particular issue of filing the appeal before the court or Tribunal. If we consider the reasons given by the assessee for not filing the appeal within the time prescribed under the statute, in light of the reasonable cause as held by various courts in number of cases, we find that, the reasons given by the assessee do not come under the ambit of reasonable cause for condonation of delay in filing the appeal. As per the affidavit filed by the assessee, the delay is due to incorrect advice received from the counsel, who appeared before the Pr. CIT in 263 proceedings. If we go through the reasons adduced by the assessee, the assessee itself has admitted the fact that it was under the bona fide belief that the Pr. CIT has set aside the assessment order passed u/s 143(3) with a direction to redo the assessment afresh and hence, it was under the belief that it may get favorable result from the AO. In consequential proceedings, when the AO was determined to make additions on the issues discussed by the PCIT in its 263 proceedings then, the assessee has decided to file appeal with explanation that the counsel, who appeared before the Pr. CIT has given incorrect advice. No doubt, in few cases, the courts have held that any incorrect advice given by a professional can be a reasonable cause for condonation of delay in filing the appeal, taking into note of the fact that the assessee, as well as the counsel was under the bona fide mistaken of a fact that there is no need of filing appeal or no action needs to be taken on this aspect. In this case, on perusal of reasons given by the assessee, we find that the assessee has taken a conscious decision not to file appeal, on the pretext of getting favorable results from the AO in consequential assessment proceedings. But, when the AO was determined to make additions on the issues, it has decided to file appeal. Therefore, it cannot be said that the professional advice given by the counsel is incorrect, which may be considered as reasonable cause for condoning the delay in filing the appeal. Further, the professional advice given by any consultant can be termed as wrong advice if the said consultant advised the assessee against the settled position of law or contrary to the provisions of the Act, but even advice is given on the belief that further alternative remedy is available to the assessee to challenge the action of any authority, then the same cannot be considered as wrong advice. In this case, as admitted by the assessee in its affidavit, the consultant, who represented the case before the AO was well aware of the law and facts of the assessee's case that in consequential proceedings before the AO against order of the Pr. CIT can be challenged and hence, no need to file appeal against order of the PCIT u/s 263 of the Act. Had it been a case of the assessee that as per the advice of the consultant there is no appeal lies

against order of the PCIT u/s 263 of the Act and subsequently, it was advised by another counsel that appeal lies against order of the Pr. CIT passed u/s 263 of the Income-tax Act, 1961, then it can be said that the advice given by the consultant is wrong and assessee was on bonafide belief. But, fact of the matter is that both parties have taken conscious decision not to file appeal, because there is alternative remedy available to the assessee, even if the order of the Pr. CIT is not challenged.

6. No doubt, the legislature has conferred power to condone delay by enacting section 5 of the Limitation Act, 1963, in order to enable the courts to render substantial justice to parties by disposing of matters on merits. The expression 'sufficient cause' in Section 5 of the Act, is adequately elastic to enable the courts to apply the law in a meaningful manner, which subserves the ends of justice that being the very purpose of the existence of the institution as courts. Therefore, courts said that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in injustice being done, because of a non-deliberate delay. At the same time, the courts have also held that it is for the assessee or the petitioner to explain every day's delay in filing the appeal, i.e. because, the law of limitation is enshrined in the statute is for the general welfare of the litigants and the rules of limitation are not meant to destroy the rights of the parties, rather the ideas are that every legal remedy must be kept alive for a legislative fixed period of time. Delay can be condoned only in those cases, where there is no gross negligence or deliberate inaction or lack of bona fide from the petitioners. Secondly, the assessee should offer acceptable and cogent reasons to condone delay. The test whether or not cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. In this case, on perusal of details filed by the assessee, we find that the assessee could have avoided the situation of not filing appeal, if it acted in a bonafide manner. The assessee on one side claims that it was a conscious decision not to file appeal, because it was under the bonafide belief that no action needs to be taken at this point of time, as the PCIT has set aside appeal for fresh assessment and on the other side, claims that it was decided to file appeal because, the Ld.AO was determined to make additions on the issues subjected to 263 proceedings. From the above, it is abundantly clear that belated filing of appeal is an afterthought, and it struck to the mind of the assessee only after it came to know that it is not getting any favorable result from the Ld.AO. Therefore, when the issue of condonation of delay in filing of appeal comes, it is for the assessee to prove beyond doubt that it was diligent and was not guilty of negligence whatsoever and also, there is a reason which prevented the assessee from filing appeal within the time allowed under the Act. The reasons shown by the assessee are neither sufficient nor bonafide, rather it is telltale from the facts on record that the assessee had consciously taken a decision not to prefer appeal against the impugned order passed under section 263 of

the Act. If assessee decided to abandon his right to appeal, he cannot be permitted to pursue that remedy again after considerable lapse of time, unless the reasons are bonafide. Finality of an order cannot be tinkered with at the whims of a party. We, therefore, are of the considered view that the reasons given by the assessee for not filing appeal within the time allowed under the Act, does not come under the reasonable cause as provided under the Act, or as explained by the various courts and hence, we reject the application filed by the assessee for condonation of delay in filing appeal.”

10. Insofar as the case law relied upon by the assessee in the case of Hon'ble Supreme Court in N. Balakrishnan Vs. M. Krishnamurthy, 1998 (7) SCC 123, the facts before the Hon'ble Supreme Court are entirely different, where the delay was caused due to inaction of the advocate who was handling the case, even the application filed by the assessee was dismissed for default. Thereafter, when the petitioner got summons from the execution side, he approached his advocate, but he was told that perhaps the execution proceedings would have been taken by the decree holder, since there was no stay against such execution proceedings. On the advice of the same advocate, he signed some papers, including a Vakalatnama for resisting the execution proceedings, besides making a payment of Rs. 2,000/- towards advocate fee and other incidental expenses. But the fact is that, the said advocate did not do anything in the court even thereafter.

The execution warrant was issued by the court, and he became suspicious of the conduct of the said advocate and hence, rushed to the court from where he got the disquieting information that his application was set aside, but ex parte decree stood dismissed for default and that nothing was done in the court thereafter on his behalf. He also learned that his advocate has left the profession and has joined as Legal Assistant in a company, and hence, he filed the present application for having the order dated 07.02.1993 to set aside. The assessee did not stop with filing the application. He also moved to the District Consumer Dispute Redressal Forum, Madras, ventilating his grievance and claiming a compensation of Rs. 1,00,000/- as against his erstwhile advocate. The said forum passed final order directing the said advocate to pay a compensation of Rs. 50,000/- besides the costs of Rs. 500/-. Under those facts and circumstances, the Hon'ble Supreme Court came to a conclusion that, when the delay was on account of inaction or lack of advice of the counsel, then it is sufficient cause for condoning the delay. In the present case, although the assessee pleads that, the delay was on account of incorrect advice given by the counsel, who represented the case before the Ld. Pr.

CIT, but going by the facts of the present case, it was the inaction of the assessee itself and the assessee has taken a conscious decision not to challenge the order passed by the Ld. Pr. CIT at that relevant time before the Tribunal. Therefore, in our considered view, the case law relied upon by the learned counsel for the assessee is not applicable to the facts of the present case and thus, rejected.

11. In this view of the matter and considering the facts and circumstances of the case and also reasons given by the assessee in the petition filed for condonation of delay, we are of the considered view that the assessee has failed to give sufficient reasons for condoning the huge delay of 360 days in filing the appeal before the Tribunal. Thus, we are not inclined to condone the delay of 360 days in filing the appeal before the Tribunal. Thus, we dismiss the appeal filed by the assessee in 'limine'.

12. Since we have dismissed the appeal filed by the assessee in 'limine' without condoning the delay, the other grounds taken by the assessee, including challenging the validity of the order passed by the Ld. Pr. CIT under Section 263 of the Act, become academic in nature, and thus, the same are dismissed as 'infructuous'.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 9th January, 2026.

Sd/- (श्री रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (मंजूनाथ जी) (MANJUNATHA G.) लेखा सदस्य/ACCOUNTANT MEMBER
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Hyderabad, dated 09.01.2026.

TYNN/sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/The Assessee	:	Mahati Engineering Industries Private Limited, 1-7A, Flat No.106, 1 st Floor, Nirmala Kuber Heights, Peerzadiguda, Uppal, Hyderabad - 500039
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, Circle – 5(1), Hyderabad.
3.	The Principal Commissioner of Income Tax, Hyderabad.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Hyderabad

S.No.	Details	Date
1	Draft dictated on	06.01.2026
2	Draft placed before author	07.01.2026
3	Draft proposed & placed before the V.P./Second Member	
4	Draft discussed/approved by the V.P/ Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File came to P.S.	
8	File sent to Bench Clerk	
9	Date on which the file goes to Head Clerk	
10	Date on which file goes to A.R.	
11	Date of Dispatch of order	