

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER

I.T.A. No. 5303/Mum/2025
ASSESSMENT YEAR: 2013-14

Giraffe Developers Private Limited Ground Floor, BMS Office, Common, Ackruti Star Pocket-5, Central Road Marol, MIDC, Andheri East Mumbai-400093 PAN: [AACCN2778D]	Vs.	Deputy Commissioner of Income Tax, Central Circle-2(4) Room No-802, 8 th Floor, Pratishtha Bhavan, Old CGO Annex, MK Road Mumbai- 400020
(Appellant)		(Respondent)

Appellant by	Shri Pavan Ved (Virtually Appeared)
Respondent by	Shri Swapnil Choudhari- SR. DR

Date of Hearing	22.01.2026
Date of Pronouncement	06.02.2026

ORDER

Per: SHRI JAGADISH, A.M.:

1. This appeal is filed by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-16, Mumbai dated 03.07.2019. The appeal is admittedly barred by limitation by 2126 days. The assessee has filed an application for condonation of delay supported by an affidavit.

2. In the affidavit, the assessee has, at the outset, stated that after the order of the learned CIT(A), it formed a bona fide belief that the case was not worth pursuing further before the Tribunal and, therefore, consciously decided not to file any appeal against the quantum order. It has further stated that the assessee was also under the belief that no penalty would be levied, and on that premise allowed the quantum order to attain finality. It is only later, after penalty proceedings were initiated and penalty was levied and confirmed by the CIT(A), that the assessee sought legal advice from an advocate practicing before the Madhya Pradesh High Court, who allegedly gave a strong opinion that the assessment order itself was without jurisdiction. On the basis of such advice, the present appeal has been filed with substantial delay.
3. Before examining whether the above explanation constitutes sufficient cause, it is necessary to briefly notice the factual background as emerging from the record and as noted by the learned CIT(A) in para 1.1 of the appellate order. The return of income for Assessment Year 2013-14 was e-filed on 30.09.2013 declaring total income at Nil and was subsequently revised on 31.03.2015, again declaring Nil income. The return was processed under section 143(1). Thereafter, the case was selected for scrutiny and notice under section 143(2) was issued on 01.09.2013. The assessment was completed under section 143(3) on 31.03.2016 determining total income at Nil after set-off of brought forward losses of Assessment Year 2012-13 amounting to ₹22.43 crore, while making certain disallowances and additions. The assessee carried the matter in appeal before the learned CIT(A) where it challenged the addition amounting to Rs 8,00,00,000 on account of disallowances u/s 37(1) and Rs 19,00,000/ on account of interest income as per Form 26AS apart from proportionate interest disallowances of Rs 52,00,000. However , assessee beforeLd CIT(A) has

withdrawn the grounds of appeal in respect of disallowances of compensation of Rs 8,00,00,000/- and also accepted the addition on interest income of Rs 18,12,599 against the addition of Rs 19,00,000/ . The Ld CIT(A) disposed of the appeal vide order dated 03.07.2019, partly allowing the appeal for statistical purposes on the two issues.

4. It is an admitted position that the assessee did not file any appeal before the Tribunal within the prescribed period of limitation and allowed the order of the Ld CIT(A) to remain unchallenged for more than five and a half years.
5. We have carefully considered the explanation furnished in the application and affidavit. The very first statement in the affidavit, namely that the assessee initially found that the case was not worth pursuing, clearly establishes that the delay is the result of a conscious, deliberate and informed decision. Such a decision, taken as a matter of perception or litigation strategy, cannot be equated with "sufficient cause" contemplated under section 253(5) of the Act.
6. The further plea that the assessee believed that penalty would not be levied is also of no assistance. Limitation for filing appeal against a quantum order does not depend upon the assessee's expectation regarding penalty. Quantum and penalty proceedings are independent. An assessee cannot keep the statutory right of appeal in suspense on the assumption that penalty may not follow, and seek to resurrect the remedy only after an adverse outcome in penalty proceedings. Such an approach would render the law of limitation wholly uncertain and unworkable.
7. The explanation that the appeal was filed only after obtaining legal advice from an advocate also does not constitute sufficient cause. It is well settled that subsequent or improved legal advice does not revive a time-barred appeal, particularly when the facts and legal

position were always within the knowledge of the assessee. Jurisdictional objections, if any, were available to the assessee at the time of assessment, during first appellate proceedings, or at least within the limitation period prescribed for filing appeal before the Tribunal. A later realization or change of legal opinion cannot undo the consequence of conscious inaction.

8. The reliance placed by the learned Authorised Representative on the judgment of the Hon'ble Supreme Court in *Collector, Land Acquisition v. Mst. Katiji* (167 ITR 471) is misplaced. The said decision does not lay down that delay must be condoned in all cases irrespective of the conduct of the party. The liberal approach enunciated therein is intended for cases where delay occurs due to bona fide reasons and not where delay arises from a deliberate choice not to pursue a remedy, as is evident in the present case from the assessee's own affidavit.
9. On the other hand, the judgment of the Hon'ble Supreme Court in *Vedabai alias Vajayanatabai Baburao Patil v. Shantaram Baburao Patil* (253 ITR 798) squarely governs the present situation. The Hon'ble Supreme Court has clearly held that a distinction must be drawn between cases of short delay and cases of inordinate delay, and that where delay is inordinate, the explanation must be convincing and satisfactory. The delay of 2126 days in the present case is grossly inordinate, and the explanation offered — namely, that the assessee initially found the case not worth pursuing, waited for the outcome of penalty proceedings, and thereafter acted on legal advice — does not meet the standard laid down by the Supreme Court.
10. The Mumbai Benches of the Tribunal have also consistently held that a conscious decision not to file an appeal, followed by a later change of mind or legal opinion, does not constitute sufficient cause,

and that pendency or outcome of penalty proceedings cannot justify condonation of delay in filing appeal against a quantum order.

11. Even otherwise, the plea that the assessment is void for want of jurisdiction cannot be accepted at the stage of condonation. It is settled law that even an allegedly void order must be challenged within the prescribed period of limitation, and unless set aside by a competent forum, continues to operate. Jurisdictional objections do not override limitation provisions.
12. On a cumulative consideration of the facts on record, including the contents of the affidavit, it is clear that the delay has occurred due to deliberate inaction and a conscious litigation decision, and not due to any circumstance beyond the control of the assessee. The affidavit, far from establishing sufficient cause, reinforces the conclusion that the assessee chose not to avail the statutory remedy in time.
13. Accordingly, we find no justification to condone the inordinate delay of 2126 days. The application for condonation of delay is rejected and, consequently, the appeal is dismissed in limine, without entering into the merits.
14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 06/02/2026 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(JAGADISH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 06/02/2026.

Ashwani Rao

Sr. Private Secretary

Copy of the order forwarded to:

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

By order

(Assistant Registrar)
ITAT, Mumbai