

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, CHANDIGARH

PHYSICAL HEARING

BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. M.A. No.74/CHANDI/2025
[In ITA No.397/CHANDI/2021]
(निर्धारणवर्ष / Assessment Year: 2018-19)

ITO Ward 6(1) Mohali	<u>बनाम/ Vs.</u>	M/s Over and Above Software and Infrastructure Solution (Oasis) C-139, Phase VIII, SAS Nagar, Mohali
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABFO-7316-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	None
Assessee by	:	Dr. Ranjit Kaur (Addl. CIT) – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	05-02-2026
घोषणाकीतारीख / Date of Pronouncement	:	05-02-2026

आदेश / O R D E R

1. By way of this application u/s 254(2), the revenue seeks my indulgence in Tribunal common order passed in captioned appeal on 27-01-2022. The bench, in its order, deleted the disallowance made by revenue u/s 36(1)(va) for late payments towards EPF & ESI. The revenue seek recall of the order in terms of subsequent decision of Hon'ble Apex Court in the case of **Checkmate Services P. Ltd Vs. CIT (2022) 143 Taxmann.com 178 (SC)** deciding this issue in favor of the revenue. The revenue also relies on the amendment brought into Sec. 36(1)(va) and Sec.43B w.e.f. 01-04-2021. However, the

undisputed position that emerges is that the application has been preferred with a delay of 227 days. The revenue seeks condonation of the same.

2. Undisputedly, the present application has been filed with a delay. Considering the provisions of Sec. 254(2) which mandate a period of 6 months for such indulgence, the application is to be rejected. The Hon'ble High Court of Bombay in the case of **Ram Baburao Salve (162 Taxmann.com 354)** has held that there is no provision in Section 254 or any other section which provides for condonation of delay beyond six months. The substantive adjudication of Hon'ble Court was as under: -

5. We should note that Section 254 of the Act reads as under:

Orders of Appellate Tribunal.

"254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit

(1A) xxxxxx

(2) The Appellate Tribunal may, at any time within [six months from the end of the month in which the order was passed], with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer:

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard:

Provided further that any application filed by the assessee in this sub-section on or after the 1st day of October, 1998, shall be accompanied by a fee of fifty rupees.

(2A) In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1) [or sub-section (2)] of section 253:

Provided that the Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under subsection (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order subject to the condition that the assessee deposits not less than twenty percent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal

amount in respect thereof and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order;

Provided further that no extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless the assessee makes an application and has complied with the condition referred to in the first proviso and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that the aggregate of the period of stay originally allowed and the period of stay so extended shall not exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed:

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

(2B) The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal."

There is no provision in Section 254 or any other section which provides for condonation of delay beyond six months.

6. In the circumstances, for reasons recorded by us in the order dated 3rd April 2024 in Interim Application (L) No.33513 of 2023 in Income Tax Appeal (L) No. 33146 of 2023, of the same Petitioner, even on merits of the delay, no sufficient cause is shown for the delay. We have observed Petitioner was not only negligent but also lacked bonafides. Writ Petition dismissed. No order as to costs.

Respectfully following the same, I would hold that the present application is not maintainable, being time barred u/s 254(2).

3. In the result, the application stand dismissed.

Order pronounced on 05th February, 2026.

-Sd-

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 05-02-2026

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH