

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

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

I.T.A. No. 7533/Mum/2025

Assessment Year: 2017-18

Sanjeev Jha Gala No. A1/007 Jai Ambe Bhumi Ind. Complex Pimplas Village Bhiwandi Thane - 421311 [PAN: ADUPJ8523J]	Vs.	ITO, Ward – 1(4), Kalyan
(Appellant)		(Respondent)

Assessee by	Shri Tanmay Milind Phadke, A/R
Revenue by	Shri Limbasiya Kavan Nareshkumar, Sr. DR

Date of Hearing	05.02.2026
Date of Pronouncement	13.02.2026

ORDER

Per Smt. Beena Pillai, JM:

The present appeal arises out of the order dated 28/01/2025 passed by the NFAC, Delhi [hereinafter referred to as ‘the Ld.CIT(A)’] for A.Y. 2017-18.

2. At the outset, it is noted that, there is a delay of 233 days in filing the present appeal. The Assessee filed a petition for condonation and an affidavit explaining the reasons for the delay in filing the appeal. It is stated in the affidavit that the Assessee was not aware of the order passed by the Ld.CIT(A) and came to know about the same only on 08/07/2025. Immediately thereafter, the Assessee forwarded the notice to his consultant and it was realized that various notices issued by the Ld.CIT(A) remained unresponded, resulting in the passing of an *ex-parte* order.

2.1. The Assessee has averred that he did not receive any of the notices issued by the office of the Ld.CIT(A) by email or post. It is further stated that being inexperienced in tax litigation and having no proper guidance, he faced difficulty in arranging the necessary documents and engaging a professional for filing the appeal. The affidavit also explains that there was delay in obtaining Form No. 35 from the previous consultant and in arranging the requisite challan amount due to financial constraints. After completing the formalities, the Assessee filed the present appeal, resulting in a delay of 233 days. The affidavit is extracted for ready reference:-

AFFIDAVIT

I, **Sanjeev Jha**, Son/of. **Dharamnath Jha**, Age 50 years, Residing at **B-104, Building No. 6, Sakivihar Complex, Off. Sakivihar Road, Sakinaka, Kurla (West), Mumbai-400072** do hereby solemnly affirm and declare as under:

- For the Assessment Year 2017-18, the assessment order was passed on 25.12.2019 under section 143(3) of the income tax act, 1961 (the Act) assessing the total income at Rs. 33,17,647/-. As per advice of my previous tax consultant, I filed an appeal against the said assessment order before the learned Commissioner (Appeals) on 17.01.2020.
- In the form 35, I mentioned my mail id jha.print@yahoo.in as the only mail id for the communication. However, I did not receive any notice or communication or order from the office of the learned Commissioner (Appeals) on the said mail id. On 08.07.2025, I received a show cause notice in the penalty proceeding wherein it was mentioned that the appeal filed by me before the learned Commissioner (Appeals) was dismissed and

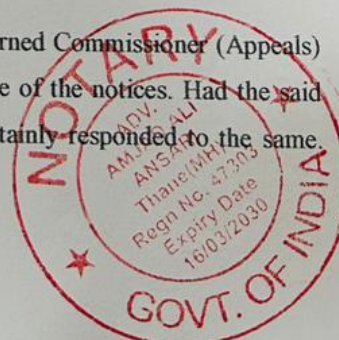
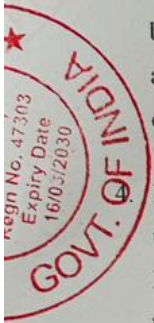
the addition made by the learned assessing officer was upheld. I came to know about the existence of the order of the learned Commissioner (Appeals) only on 08.07.2025.

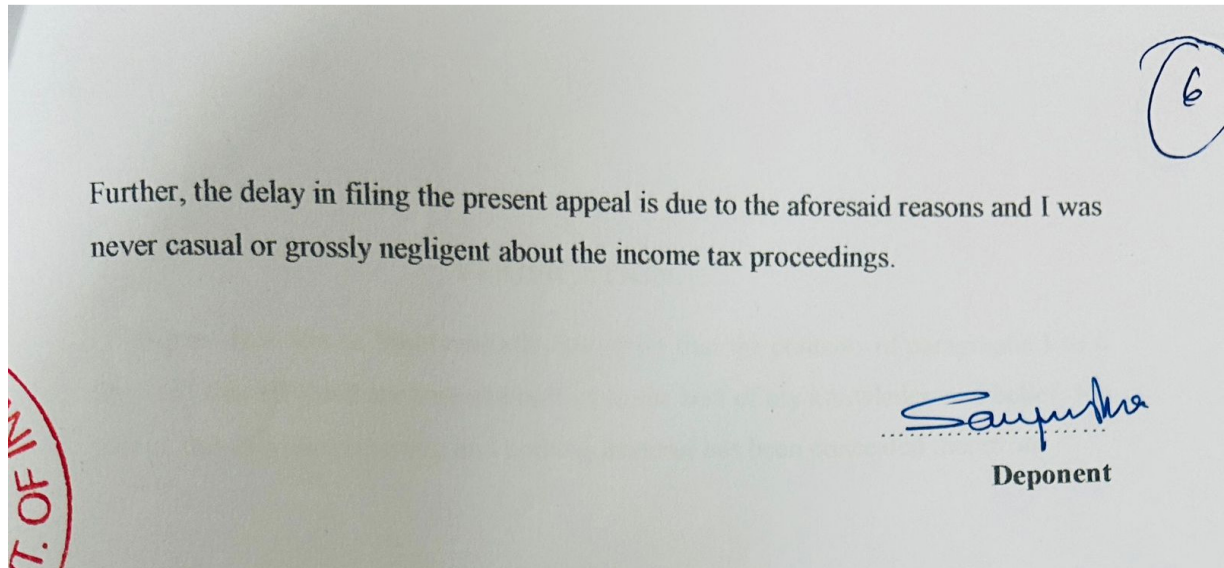
3. I immediately forwarded the said notice to my consultant for the necessary action and after visiting the portal, it was realised that the learned Commissioner (Appeals) sent various notices which remained to be responded due to which the aforesaid order came to be passed ex-parte. I hereby mention that I was not in receipt of any of the notices and order issued by the office of the learned Commissioner (Appeals) by email or post. I asked a tax consultant about a further course of action. I was told that an appeal would be required to be filed before the Hon'ble ITAT from a chartered accountant or an advocate practising before the said for the forum. My tax consultant mentioned that he does only compliance practice and is not aware of the ITAT appeal filing compliance.

I did not have any contacts. Further, this kind of tax litigation happened for the first time in my life and I did not have any sort of experience. I was completely clueless. However, through one acquaintance, I came in contact with a chartered accountant in the second week of October, 2025. I was asked to get the documents like the order passed by the learned Commissioner (Appeals), assessment order, and form 35 and the challan of Rs. 10,000/- to file an appeal before the Hon'ble ITAT.

5. I once again visited the office of my tax consultant for the above documents. However, it was realised that the form 35 was filed by my previous tax consultant and that was not getting downloaded from the income tax portal. I thereafter approached my previous consultant and requested him to give me a downloaded copy of form 35 from his laptop. Unfortunately, it was received in the last week of October, 2025. Apart therefrom, I could not pay the challan of Rs. 10,000/- due to my financial problems and paid it on 18.11.2025. Finally, I filed an appeal before the Hon'ble ITAT on 19.11.2025 resulting in the delay of 233 days out of which the initial delay of 99 days happened due to lack of knowledge of passing of the order and, the further delay of 134 days occurred because of the aforesaid reasons.

6. I humbly mention that non-participation before the learned Commissioner (Appeals) happened due to lack of knowledge about the issuance of the notices. Had the said notices been within my knowledge, I would have certainly responded to the same.





2.1. From the affidavit filed by the assessee, there does not arise any *malafide* intention on behalf of assessee for not filing the present appeals before this Tribunal.

2.2. In our view, the assessee has made out a reasonable cause for the delay that is caused in filing the present appeals before this Tribunal. Nothing to establish any contrary intention has been filed by the revenue before this Tribunal. In our opinion there is a 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.

2.3. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

- 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 out 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.*

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

2.4. Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeals as it is not attributable to the assessee.

In any event, though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

2.5. We take support from the observations 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". Even *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles. Respectfully following the thoughts propounded by Late *Hon'ble Justice Krishna Iyer*, as well as various decisions of *Hon'ble Supreme Court* on similar issues, we condone the delay caused in filing the present appeals before this *Tribunal*.

3. Coming to the merits of the case, we find that the Ld.CIT(A) has passed ex-parte order due to non-appearance of the Assessee. In the interest of natural justice, we are of the considered view that the Assessee should be provided one more opportunity of being heard. Accordingly, we set aside the impugned order of the Ld.CIT(A) and remit the matter back to the file of the Ld.CIT(A) for fresh adjudication on merits after providing adequate opportunity of being heard to the Assessee. The Assessee is also directed to cooperate with the appellate proceedings and not to seek unnecessary adjournments.

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

Order pronounced in the open court on 13/02/2026

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 13/02/2026
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