

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

**BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)**

**I.T.A. No. 506/Mum/2025**

**Assessment Year: 2012-13**

<b>Shri Bharat Navinchandra Gala</b> 402, God Gift B Wing, Adarsh Layout off Malad West Mumbai - 400064 <b>[PAN: AABPG7900J]</b>	Vs.	<b>Income Tax officer, Wd – 41(3)(1), Mumbai</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	Shri Nimesh Thar, A/R
<b>Revenue by</b>	Shri Limbasiya Kavan Nareshkumar, Sr. DR

<b>Date of Hearing</b>	05.02.2026
<b>Date of Pronouncement</b>	20.02.2026

**ORDER**

**Per Smt. Beena Pillai, JM:**

The present appeal arises out of the order dated 26/12/2023 passed by the Ld. Commissioner of Income Tax (Appeals)/Addl./JCIT(A)-1, Coimbatore [hereinafter “the Ld.CIT(A)"] for A.Y. 2012-13 on the following grounds of appeal:-

**2.** At the outset, it is noted that, there is a delay of 330 days. There is a delay of 330 days in filing the present appeal. The Assessee has filed an affidavit explaining the reasons for the delay. It is stated that the impugned appellate order dated 26/12/2023 for A.Y. 2012-13 was e-received on 26/12/2023 and the appeal was required to be filed on or before 25/02/2024. However, due to the registration of an FIR bearing No. 0219 dated 09/03/2024 against the Assessee under section 154 of the Cr.PC at Malad West Police

Station, the Assessee was not available and was preoccupied with the said proceedings, as a result of which the appeal could not be filed within the prescribed time. The appeal was eventually filed before the Tribunal on 24/01/2025, resulting in a delay of 330 days.

**2.1.** Having regard to the submissions by the assessee, we refer to the decision of *Hon'ble Cochin Bench of this Tribunal* in the case of *Midas Polymer Compounds Pvt. Ltd.* dated 25.6.2018, condoned the delay of 2819 days by observing as follows:

*"6. We have heard the rival submissions and perused the record. There was a delay of 2819 days in filing the appeal before the Tribunal. The assessee has stated the reasons in the condonation petition accompanied by an affidavit which has been cited in the earlier para. The assessee filed an affidavit explaining the reasons and prayed for condonation of delay. The reason stated by the assessee is due to inadvertent omission on the part of Shri Unnikrishnan Nair N, CA in taking appropriate action to file the appeal. He had a mistaken belief that the appeal for this year was filed by the assessee as there was separate Counsel to take steps to file this appeal before the ITAT. Therefore, we have to consider whether the Counsel's failure is sufficient cause for condoning the delay. The Madras High Court considered an identical issue in the case of Sreenivas Charitable Trust v. Dy. CIT (280 ITR 357) and held that mixing up of papers with other papers are sufficient cause for not filing the appeal in time. The Madras High Court further observed that the expression "sufficient cause" should be interpreted to advance substantial justice. Therefore, advancement of substantial justice is the prime factor while considering the reasons for condoning the delay.*

*6.1 On merit the issue is in favour of the assessee. But there is a technical defect in the appeal since the appeal was not filed within the period of limitation. The assessee filed an affidavit saying that the appeal was not filed because of the Counsel's inability to file the appeal. The Revenue has not*

*filed any counter affidavit to deny the allegation made by the assessee. While considering a similar issue the Apex Court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:*

*(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 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.*

*(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay?*

*The doctrine must be applied in a rational, commonsense and pragmatic manner.*

*(4) When substantial justice and technical consideration 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 a nondeliberate delay.*

*(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

*(6) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

*6.2 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of nondeliberate delay. In the case on our hand, the issue on merit regarding allowability of deduction u/s. 80IB of the Act was covered in favour of the assessee by the binding Judgment of the jurisdictional High Court. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. As observed by Apex Court, if the*

*application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the Tribunal is capable of removing injustice and to do justice. Therefore, this Tribunal is bound to remove the injustice by condoning the delay on technicalities. If the delay is not condoned, it would amount to legalising an illegal order which would result in unjust enrichment on the part of the State by retaining the tax relatable thereto. Under the scheme of Constitution, the Government cannot retain even a single pie of the individual citizen as tax, when it is not authorised by an authority of law. Therefore, if we refuse to condone the delay, that would amount to legalise an illegal and unconstitutional order passed by the lower authority. Therefore, in our opinion, by preferring the substantial justice, the delay of 2819 days has to be condoned.”*

6.3

**2.2.** In the present facts, on examining whether the reason stated by the assessee to seek condonation of delay before this *Tribunal* is sufficient to condone the delay and whether, there exists sufficient cause for not presenting the appeal before this *Tribunal* within the period of limitation under the statute, the assessee must show that, it was diligent in taking appropriate steps and the delay was caused notwithstanding with its due diligence. It is for the party concerned to explain the reasons for delay and it is not the function of concerned authorities often to find cause for delay. The Court/authority has to examine whether the sufficient cause has been shown by the party for condoning the delay, and whether such cause is reasonable or not.

**2.3.** In the present case in hand, the assessee explained the delay in filing the appeals before this *Tribunal* was on the reason that the assessee was held up with a criminal proceeding initiated against him. This being the position, it constitutes sufficient cause for filing the appeal belatedly.

**2.4.** In any case, the assessee is not benefitted with the delay caused in filing appeal before this tribunal, the lapse that occurred on behalf of the representative cannot be attributed to the assessee for which assessee could be punished.

In case of *People Education & Economic Development Society Vs. ITO* reported in *100 ITD 87 (TM) (Chen)*, 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”.*

**2.5.** The next question that arises is whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not able to file the appeals within the period of limitation. The cause for the delay therefore deserves to be considered, when there exist a reasonable cause, and therefore the period of delay may not be relevant factor. In support, we rely on the decision of *Hon’ble Madras High Court* in the case of *CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596)* considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. *Hon’ble Madras High Court* thus condoned nearly 21 years of delay in filing the appeal. As compared to 21 years, delay of about 1000 to 2000 days cannot be considered to be inordinate or excessive.

*Hon’ble Madras High Court* in the case of *Sreenivas Charitable Trust* reported in *280 ITR 357* held that, no hard and fast rule can be laid down in the matter of condonation of delay and the Court

should adopt a pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance and the expression "sufficient cause" should receive a liberal construction. Therefore, this Judgment of the *Hon'ble Madras High Court (supra)* clearly says that in order to advance substantial justice which is of prime importance, the expression "sufficient cause" should receive a liberal construction. Therefore, for the purpose of advancing substantial justice which is of prime importance in the administration of justice, the expression "sufficient cause" should receive a liberal construction. In opinion of this *Tribunal*, this decision of *Hon'ble Madras High Court* is applicable to the present facts of the case. A similar view was taken by *Hon'ble Madras High Court* in the case of *Venkatadri Traders Ltd. v. CIT (2001) 168 CTR (Mad) 81 : (2001) 118 Taxman 622 (Mad)*.

**2.6.** Reliance is also placed on the decision of *Hon'ble Mumbai Bench of this Tribunal* in the case of *Bajaj Hindusthan Ltd. v. Jt. CIT (AT)* reported in *277 ITR 1* condoned the delay of 180 days when, the appeal was filed after the pronouncement of the Judgment of the *Hon'ble Supreme Court*. It is also to be noted that the Revenue has not filed any counter-affidavit opposing the application of the assessee for condonation of delay. *Hon'ble Supreme Court* in the case of *Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi* reported in *AIR 1978 SC 537* held that, non-filing of affidavit in opposition to an application for condonation of delay may be a sufficient cause for condonation of delay. In this

case, the Revenue has not filed any counter-affidavit opposing the application of the assessee, therefore, as held by *Hon'ble Supreme Court*, there is sufficient cause for condonation of delay. *Hon'ble Supreme Court* also observed that; “It does not mean that when the delay was for longer period, the delay should not be condoned even though there was sufficient cause. Condonation of delay is the discretion of the Court/Tribunal. Therefore, it would depend upon the facts of each case. In our opinion, when there is sufficient cause for not filing the appeal within the period of limitation, the delay deserves to be condoned, irrespective of the duration/period.”

**2.7.** After considering the contents of the affidavit and the petition for condonation of delay, we are satisfied that the delay was caused due to circumstances beyond the control of the Assessee and that there was a reasonable and bona fide cause for not filing the appeal within the stipulated period. There is nothing on record to suggest that the delay was deliberate or attributable to any mala fide intention. Accordingly, the delay of 330 days in filing the appeal is condoned and the appeal is admitted for adjudication. We therefore feel that the reasons assigned by the assessee inability to present the appeal within time before this Tribunal deserves consideration based on the principles laid down by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471. The relevant observation of *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*,(supra) is 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.”*

**Accordingly, the delay in filing of the appeal is condoned and the appeal is admitted.**

**3. Brief facts of the case are as under:**

The assessee is engaged in the business of builders and developers and is running his business under the name and style of his proprietary concern, M/s Arihant Builders & Developers. During the year under consideration, the assessee filed the return of income declaring a loss of ₹51,224/-. The return was filed on

30/09/2012 and was processed u/s 143(3). Subsequently, the case was selected for scrutiny and notice u/s 143(2) along with u/s 142(1) of the Act was issued to the assessee calling for various details. In response to the statutory notices, the assessee furnished the requisite details.

**3.1.** The Ld. AO noted that the assessee had incurred certain expenses relating to his project and carried the same to the work-in-progress (WIP) account. The Ld. AO further noted that the assessee had shown brokerage income of ₹47,000/- after claiming various expenses against the same. The Ld. AO also noted that the assessee had computed loss from house property at ₹1,11,177/- u/s 24(b) of the Act. As no evidence was furnished by the assessee in respect of the interest expenditure, the said claim was disallowed by the Ld. AO.

**3.2.** The Ld. AO further noted that the assessee had given interest-free loans/advances of ₹21,00,000/- in his personal balance sheet. It was also noted that the assessee had unsecured loans and had claimed to have incurred interest expenditure thereon. The Ld. AO observed that the closing balances of the loans appearing in the business balance sheet and the personal balance sheet of the assessee were ₹1,64,23,802/- and ₹49,09,185/- respectively.

**3.3.** It was further noted that the assessee had paid interest of ₹10,74,713/- in his proprietary concern and ₹4,57,922/- in his personal capacity. Thus, the Ld. AO observed that the assessee had debited a total sum of ₹15,32,635/- towards interest expenditure and charged the same to the construction/WIP account. From the

balance sheet of the proprietary concern, it was noted that the assessee's capital account showed a negative balance of ₹28,35,793/-. The assessee was, therefore, called upon to demonstrate with evidence the purpose for which the interest-bearing loans were utilized. The assessee was also asked to explain the purpose of the loans/advances given and the source of such loans/advances. In response, the assessee, vide letter dated 29/01/2015, furnished the details of loans taken and the list of loans/advances given. It was submitted that the same were for business purposes, including advances for purchase of property. However, as no supporting details were furnished in respect of the loans and advances amounting to ₹53,42,344/- appearing in the balance sheet, the Ld. AO was not convinced with the submissions of the assessee. The Ld. AO was also not satisfied with the explanation of the assessee as to why the interest on interest-bearing funds allegedly used for business purposes should be allowed. The assessee could not furnish any documentary evidence such as agreements or MOUs to substantiate the contention that the amounts were given as advances for purchase of property.

**3.4.** The Ld. AO further noted that out of the loan funds of ₹27,65,000/-, the assessee had withdrawn ₹20,59,000/- for personal purposes. It was also observed that the assessee had merged the entire interest expenditure and charged the same to the combined construction/WIP account, even though a part of the funds was withdrawn for personal purposes or used for giving interest-free loans/advances. The Ld. AO was, therefore, of the opinion that the proportionate interest relating to the

loans/advances given and the negative capital, indicating diversion of interest-bearing funds for non-business purposes, could not be allowed to be capitalized with the WIP and was not an allowable expense. Accordingly, the Ld. AO disallowed interest expenditure of ₹8,46,317/- by reducing the same from the closing WIP. The Ld. AO also disallowed interest at 18% from various parties as no details were furnished by the assessee in respect thereof. Consequently, the WIP was reworked by the Ld. AO at ₹1,37,00,000/-.

**3.5.** The Ld. AO also disallowed and recomputed the profit from sale of a room in the tenanted building known as Asha Deep at ₹14,88,900/-.

**3.6.** Aggrieved by the additions made by the Ld. AO, the assessee preferred an appeal before the Ld.CIT(A).

**4.** Before the Ld.CIT(A), the assessee furnished written submissions. However, the Ld.CIT(A) dismissed the claim of the assessee in respect of the deduction claimed u/s 24(b). The Ld.CIT(A) also rejected the assessee's claim relating to proportionate interest of ₹8,46,317/- and the claims regarding reduction of interest paid to B N Gala HUF of ₹1,30,546/-, Madhu K. Nayak and Pinky D. Nayak to the extent of Rs.32,451/-, interest expenses paid to Vijay S. Madavkar amounting to Rs.60,000/-.

**4.1.** Further, the Ld.CIT(A) disallowed expenditure to the extent of ₹1,39,426/- claimed in the profit and loss account of the proprietary concern by holding that the same was not incurred for earning rental or maintenance income.

**4.2.** The Ld.CIT(A) also upheld the action of the Ld. AO in adding ₹14,88,900/- on sale of a room in the tenanted building of the proprietary concern. The Ld.CIT(A) further upheld the action of the Ld. AO in reducing the WIP to ₹1,37,48,785/- as against ₹1,48,68,244/- claimed by the assessee.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before the *Tribunal*.

**5.** The Ld. AR, on behalf of the assessee, submitted that the Ld. CIT(A) erred in not considering the detailed written submissions dated 11/05/2014 filed before him, which are placed in the paper book at pages 152 to 166 and 167 to 202. It was contended that all relevant details and supporting evidences were duly furnished and the impugned issues were adequately explained therein.

**5.1.** With regard to the disallowance of interest paid to various parties, the Ld. AR submitted that copies of ledger accounts, confirmations, and other supporting documents were placed on record to substantiate the expenditure incurred by the assessee. It was explained that the assessee was consistently following the Project Completion Method (PCM) of accounting. The interest expenditure pertaining to earlier years was claimed in the year in which the liability crystallized. Since no corresponding revenue was recognized during the year under consideration, such interest was capitalized to Work-in-Progress (WIP) as prior period expenditure in accordance with the method of accounting regularly followed by the assessee.

**5.2.** It was further submitted that the disallowance of interest paid to certain loan creditors was made merely on the ground that the creditors did not respond to summons issued under section 131 of the Act. However, the said creditors had duly responded to notices issued under section 133(6) of the Act and had furnished confirmations along with supporting documents directly to the Ld.AO. The Ld.AR contended that once the confirmations and requisite details were available on record, no adverse inference ought to have been drawn merely for non-compliance with summons under section 131. It was argued that the authorities below failed to properly appreciate the evidences furnished and rejected the claim on assumptions rather than on a proper evaluation of the material on record.

**5.3.** The Ld.AR further submitted that the property in question was situated in an old building named *Asha Deep*, comprising 11 tenants, each occupying one room admeasuring approximately 300 square feet. It was submitted that one such room was sold on 07/04/2011 for a consideration of ₹2,18,00,000/-. However, since the assessee was consistently following the Project Completion Method (PCM), the sale proceeds were not recognized as income during the year under consideration.

**5.4.** It was contended that the said room was sold prior to the redevelopment of the project and that the consideration received was not connected with, nor attributable to, the redevelopment activity. According to the Ld. AR, the transaction pertained to

transfer of tenancy rights in the existing structure and had no nexus with any future redevelopment benefits.

**5.4.** The Ld.AR submitted that the Ld. AO had placed reliance on the revised Guidance Note on Accounting for Real Estate Transactions effective from 01/04/2012. It was argued that the said Guidance Note was prospective in operation and not applicable to the year under consideration. Therefore, the rejection of the PCM consistently followed by the assessee was not justified in law.

**5.5.** It was further submitted that the authorities below questioned the adoption of PCM on presumptions, namely that redevelopment of the building was not an immediate plan and that the assessee had allegedly transferred tenancy rights in the existing building to his brother at a relatively lower consideration so as to enable him to secure higher-value benefits upon redevelopment. The Ld.AR contended that these presumptions were factually incorrect, unsupported by evidence, and formed the sole basis for sustaining the addition of ₹14,88,900/-.

**5.6.** According to the Ld.AR, the addition was thus founded on conjectures rather than on cogent material. It was also submitted that the reworking of the Work-in-Progress (WIP) by the Ld.AO was based on incorrect factual assumptions and an erroneous understanding of the accounting method consistently followed by the assessee.

**5.7.** On the other hand, the Ld. DR relied on the orders of the authorities below.

Have heard the submissions advanced by both sides in light of records placed before this *Tribunal*.

**6.** The primary grievance of the assessee is that the Ld.CIT(A) has not dealt with the detailed written submissions filed before him along with supporting evidences, which are stated to be placed in the paper book at pages 152 to 202. The issues raised relate to

- (i) disallowance of interest paid to various parties,
- (ii) treatment of such interest under the Project Completion Method (PCM),
- (iii) capitalization to Work-in-Progress, and
- (iv) taxability of consideration received on sale of a room in the building known as Asha Deep.

**6.1.** On perusal of the orders of the authorities below, we find that the evidences in the nature of ledger accounts, confirmations, and replies filed by the creditors in response to notices issued under section 133(6) of the Act have not been examined in a comprehensive manner. The disallowance appears to have been made primarily on account of non-compliance by certain parties with summons issued under section 131 of the Act, without reconciling the material already available on record.

**6.2.** Further, the claim of the assessee that it has been consistently following the Project Completion Method and that the interest expenditure has been capitalized to Work-in-Progress in accordance

with such method also requires factual verification with reference to the books of account and past assessments.

**6.3.** With regard to the sale of one room for a consideration of ₹2,18,00,000/-, the contention of the assessee that the transaction pertains to transfer of tenancy rights in the existing structure and is not connected with the redevelopment activity has not been examined with reference to the underlying agreements, nature of rights transferred, and the stage of the project. The applicability or otherwise of the revised Guidance Note on Accounting for Real Estate Transactions also requires examination in the light of the method of accounting regularly followed by the assessee.

**6.4.** These aspects require fresh verification of facts and examination of evidences. The issues have been decided by the authorities below largely on presumptions without a proper analysis of the documentary material placed on record.

**6.6.** Accordingly, in the interest of justice, I deem it appropriate to set aside the impugned order on these issues and restore the matter to the file of the Ld. AO for de novo adjudication. The Ld. AO shall examine the ledger accounts, confirmations received under section 133(6), method of accounting followed by the assessee, capitalization of interest to Work-in-Progress, nature of the rights transferred in respect of the property, and the applicability of the relevant accounting guidance. The Ld. AO shall afford adequate opportunity of being heard to the assessee and decide the issues in accordance with law.

**6.7.** The assessee is also directed to furnish all necessary details and evidences in support of its claim. We make it clear that we have not expressed any opinion on the merits of the additions.

**Accordingly, grounds raised by assessee stands partly allowed for statistical purposes.**

**In the result, appeal filed by assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 20/02/2026**

**Sd/-**

**(BEENA PILLAI)  
Judicial Member**

Mumbai  
Dated: 20/02/2026  
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**