

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

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.164/MUM/2026
(A.Y. 2017-18)**

Nrupesh Shah, HUF Flat No. 701, 7 th Floor, Heritage View Building, Dadabhai X Road No. 3, Ville Parle (West), Mumbai - 400056, Maharashtra	v/s. बनाम	Income Tax Officer, Ward - 34(3)(2) IT Office, Kautilya Bhavan, BKC Bandra East, Mumbai - 400 051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAHHN0469H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Viraj Mehta, AR
Respondent by :	Shri Brajendra Kumar (Sr. DR)

Date of Hearing	11.02.2026
Date of Pronouncement	09.03.2026

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 12.12.2025 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 147 r.w.s. 144 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 12.05.2023 for the Assessment Year [A.Y.] 2017-18. The Stay Application referred above has been



w.r.t.to the impugned order is also considered in this composite order for the sake of convenience.

2. The grounds of appeal are as under:-

1) Ground No. 1: Denial of Condonation of Appeal of 155 days

On facts and circumstances, Ld. CIT(A) has erred in denying the condonation of filing appeal of 155 days. Such denial is bad in law and condonation of appeal ought to be allowed as order is passed without opportunity of being heard and violating the principles of natural justice.

2) Ground No. 2: Violation of Natural Justice

On facts and circumstances. Ld. CIT(A) has erred in passing the order without providing proper opportunity of hearing to the appellant. Such addition is bad in law and liable to be deleted as order is passed without opportunity of being heard and violating the principles of natural justice.

3) Ground No. 3: Addition of Rs. 22,95,430/- u/s 68

On facts and circumstances, Ld. CIT(A) has erred in confirming action of the Ld. Assessing Officer in addition of Rs. 22.95.430/- u/s 68 on account that appellant has traded in penny stock M/s Kushal Tradelinks without considering the submissions made by the appellant. Such addition is bad in law and liable to be deleted,

3. Brief facts of the case are that as per Form No. 35 of appeal as filed before the ld.CIT(A), it was noted that while the impugned order sought to be challenged in this appeal was 12.05.2023, the appeal had been filed only on 13.11.2023 after a delay of **155 days**. The ld.CIT(A) observed that there was substantial delay in filing of the appeal and as



per section 249(2) of the Act, the appeal had to be filed within 30 days of the service of the order to the appellant. It was not the case of the appellant that the order was not served to him. Before him the assessee contended that on receipt of assessment order, he was grossly upset and surprised receiving for the assessment order raising huge demand. During the time of assessment proceeding, health of father of karta deteriorated. The doctors advised him to take his father to native place for fresh and dry air. As soon as assessment proceeding finished, he left for the native village along with his father. Due to this he missed to file the appeal on time. In the circumstances of case for the reason stated, his default had not been guilty of wilful or intentional lapse. He therefore prayed for the condonation of the delay in filing stating that this appeal which was stated to be neither conscious and deliberate inaction, nor culpable negligence and indifference to the period of limitation mandatorily prescribed by law but had occurred due to unavoidable reasons beyond control to file the appeal within time. However, the ld.CIT(A) did not consider the request as sufficient cause for condonation for such a delay. He observed that the medical certificate of his father had also not submitted by the assessee. Further, it was noted that the assessment order was duly served upon the



appellant through electronic means on registered e-mail as per Rule 127 of Income Tax Rules, 1962. Hence, electronic service of order and notice was valid and the explanation given by the appellant did not amount to “sufficient cause” within the meaning of section 249 of the Act. Hence, the delay was not accepted and the appeal was dismissed without going into the merits of the case.

4. Before us, the Id.AR has reiterated that the delay before the appellate authority was not deliberate with any malafide intention and occurred due to certain unavoidable reasons. It is pleaded to condone the delay in the interest of substantial justice as the Revenue would not be benefitted in any manner but the assessee would be adversely penalised Id.DR on the other hand relied on the appellate order.

5. On careful consideration of the submissions of the assessee, we are of was not intentional but due to unavoidable and sufficient cause. Such a bonafide mistake needs to considered liberally. In this connection, reliance could be placed on the landmark decision of hon’ble Supreme Court which inter alia held in **Collector, Land Acquisition v Mst. Katiji And Others- 167 ITR 471 (SC)** that “ordinarily, a litigant does not stand to benefit by lodging an appeal late.....Refusing to condone delay can result in a meritorious matter



being thrown out at the very threshold and cause of justice being defeated....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.... A litigant does not stand to benefit by resorting to delay. In fact, he runs serious risk.” We therefore, condone the delay.

6. We find that the Id.CIT(A) has dismissed the appeal *in limine* on the issue of delay only. Therefore, substantive adjudication of the issues could not be done by him without opportunity of hearing to the assessee. In the grounds of appeal, we find that the assessee has raised various grounds of appeal challenging the impugned addition. In the light of above observations and in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the Id.CIT(A) for adjudicating the appeal on merits.

6.1 However, considering assessee's non-compliant attitude and lack of diligence in pursuing the appeal, we impose a cost of Rs. 5,000/- on him. The cost shall be deposited in the Prime Minister's Relief Fund



within 15days of the receipt of this order and proof of payment shall be submitted before the ld.CIT(A).

7. In the result, the appeal is allowed with cost for **statistical purposes.**

SA No.9/MUM/2026(A.Y. 2017-18)

8. The instant Stay application is filed by the assessee requesting for stay of the demand. Since we have already remanded the entire appeal to the ld.CIT(A) for deciding the same afresh on merits, we direct the AO not to take any coercive measure against the assessee till the disposal of the appeal by the appellate authority.

9. In the result, the stay application of assessee is **allowed.**

Order pronounced in the open court on **09/03/2026.**

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 09.03.2026

Lubhna Shaikh / Steno

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



ITA No. 164/Mum/2026
SA No. 9/Mum/2026
A.Y. 2017-18
Nrupesh Shah HUF, Mumbai

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

