

**आयकर अपीलीय अधिकरण न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &**  
**SHRI ARUN KHODPIA, AM**

**I.T.A. No.8139/Mum/2025**  
(Assessment Year: 2016-17)

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(Assessment Year: 2016-17)

<b>SachinkumarSubrai Kanse,</b> G-201, Malhar Lokpuram, Vasant Vihar, Thane West, Thane, Maharashtra-400610. <b>PAN: AQVPK8114C</b>	Vs.	<b>ITO-42(3)(3),</b> Room No. 610, Kautilya Bhawan, C-41 to C-43, G-Block, BKC, Bandra East, Mumbai-400051.
<b>Revenue - अपीलार्थी / Appellant</b>	:	<b>Assessee - प्रत्यर्थी / Respondent</b>

**Assessee by** : Shri Himanshu Gandhi, AR  
**Revenue by** : Shri Sanjeev Bhagat, Sr. DR  
**Date of Hearing** : 02.03.2026  
**Date of Pronouncement** : 05.03.2026

**ORDER**

**Per Arun Khodpia, AM:**

The captioned appeals are preferred by the assessee against the 2 orders of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short “Ld. CIT(A)”], both dated 12.09.2025, for the Assessment Year (AY) 2016-17. The aforesaid orders are passed against the assessment under section 147 r.w.s. 144 of the Income Tax Act, 1961 (in short

“The Act”) dated 19.12.2023 and penalty order under section 271(1)(c) of the Act dated 03.06.2024. The grounds of appeal raised by the assessee in both the appeals are as under:

**ITA No. 8139/Mum/2025**

*“1. On the facts and circumstances of the case and law, the Ld. CTT(A) erred in dismissing the appeal ex-parte without adjudicating the grounds of appeal on merit.*

*2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of Ld AO in levying penalty of Rs. 22,91,750/- under section 271(1)(c) of the Income Tax Act, 1961.”*

**ITA No. 8140/Mum/2025**

*“1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in dismissing the appeal on mere delay in filling appeal without adjudicating the grounds of appeal on merit.*

*2. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming reassessment proceedings u/s 148 of the Income Tax Act, 1961 which is bad in law and required to be quashed.*

*3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reopening of assessment without considering the fact that the proceedings for AY 2016-17 are time barred as per section 149(1)(b) of Income Tax Act, 1961*

*4. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of Ld AO in initiating reassessment proceedings by issuing notice u/s 148 by JAO in violation of CBDT notification dated 29.03.2022*

*5. On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld AO in making an 5 addition of Rs. 80,00,000/- by treating the full value of consideration as Long-term capital gains ignoring the indexed cost of acquisition and indexed cost of improvement*

*6. Without Prejudice to Ground No 5. On the facts and circumstances of the case and law, the Ld CIT(A) failed to consider that as per the assumption of Ld AO, the cost being absent, no capital gain could be computed as the computation*

*mechanism in section 48 of Income Tax Act, 1961 gets failed in the absence of Cost.*

*7. On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld AO in making addition of Rs. 80,00,000/- without mentioning of any provisions under which the said income is taxable*

*8. On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld AO in making addition of Rs. 80,00,000/- as long-term capital gain however taxing the same at normal slab rate.*

*9. Without Prejudice to the above grounds of appeal, on the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld AO in not allowing the credit of taxes paid through TDS on sale of Property and TDS on Salary.*

*10. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld. AO in levying interest under section 234A and 234B of the Income Tax Act.”*

2. At the outset, the ld. AR representing the assessee submitted that both the aforesaid appeals of assessee are dismissed *in limine* by the ld. CIT(A) on account of delay in filing of appeal for 193 days for quantum appeal and dismissal on account of non-prosecution while dealing with the penalty order under section 271(1)(c) of the Act. It was the submission that due to certain unavoidable circumstances beyond the control of assessee, the assessee was unable to furnish the appeal within prescribed time period. The reasons explained before us are that during the relevant AY, the assessee's father was paralyzed, so washospitalized several times in that year and because of that the assessee has lost his job on 29.01.2016, it was the effect of father's treatment that the assessee was facing financial stress and therefore has sold his flat on 22.02.2016. It is further submitted that due to illness of father, the mother of assessee went into depression

and ultimately expired on 03.09.2016. The assessee was the only person to take care of his bed-ridden paralyzed father. Subsequently, the assessee came back to Mumbai with his father, searching for a job, which he could find in the month of October 2016. It is explained that due to all the above reasons the assessee was not able to file his return of income. The assessee had logged into his Income-tax Portal only at the time of filing of return, but he was unaware about the reassessment proceeding which was initiated under section 147 of the Act. For such reasons the assessee could not file any response during the assessment proceedings and was further delayed in filing of the appeal before the First Appellate Authority (FAA). It is also mentioned that due to storage issue the emails sent to the assessee by revenue were not received by him. On 24.05.2024 by initiation of penalty proceedings, the Department has issued a physical notice to the assessee but in absence of his presence at the home, the notice was served through affixture. On his return to home, it was noticed by the assessee first time that some tax proceedings are going on against him but was not aware of the same. Once the assessee became conscious about the proceedings, he immediately approached his Chartered Accountant (CA) and thereafter the appeals were filed, but with a delay of 165 days. It was the submission that there was sufficient cause, therefore the delay in filing of appeal before the FAA was to be condoned but the Id. CIT(A) had dismissed the appeal of assessee without condoning the delay.

3. Having gone through the aforesaid facts, we find that there were sufficient reasons which were beyond the control of the assessee and the assessee was going through a bad phase in life having issues like ailment of his father, death of his mother and became unemployed. We, thus find it appropriate to direct the Id. CIT(A) to condone the delay in filing of appeal before him and decide the appeals of assessee on merits.

4. For non-prosecution the case of appeal against the penalty order under section 271(1)(c) of the Act dated 30.06.2024, we find that on similar reasons the assessee was unable to make any submissions before the authorities below.

5. Having heard the rival submissions, on perusal of facts on record, we find that in present case there were sufficient challenges before the assessee which were led him for delay in filing of the appeal within time and also non-prosecution before the Id. CIT(A). Even otherwise as directed by the Hon'ble Apex Court in various cases, the aspect relating to condonation of delay should have been looked into with a liberal and justice-oriented approach. It is also held by the Hon'ble Courts that the First Appellate Authority is duty bound to decide the issues on merits even if there is non-prosecution on the part of assessee by taking into consideration the facts and material available on record.

6. We thus in backdrop of aforesaid facts and circumstances of the present appeal are of the considered view that these two appeals qualify for adjudication

on merits, therefore we are restoring the same to the file of ld. CIT(A) for fresh adjudication.

7. Needless to say, sufficient opportunity of being heard shall be provided to the assessee in the set aside proceedings. The assessee is also directed to comply with the set-aside appellate proceedings, failing which the Ld CIT(A) would be at liberty to decide the appeal as per mandate of law.

8. In result, both the aforesaid appeals of assessee are **allowed for statistical purposes**, in terms of our aforesaid observations.

*Order pronounced in the open court on 05-03-2026.*

*Sd/-*  
**(ANIKESH BANERJEE)**  
**Judicial Member**  
Mumbai, Dated : 05-03-2026.  
*\*SK, Sr. PS*

*Sd/-*  
**(ARUN KHODPIA)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**