

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

ITA No.296/Ind/2025  
Assessment Year: 2019-20

Amey Jain, 127, Anurag Nagar BH Press Complex, Vijay Nagar, Indore	<b><u>बनाम/</u></b> Vs.	ITO 1(1), Indore
(Assessee/Appellant)		(Revenue/Respondent)
<b>PAN: AQBPJ1217D</b>		
Assessee by	Shri Harsh Choukse & Shri Kunal Agrawal, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	23.03.2026	
Date of Pronouncement	27.03.2026	

**आदेश / O R D E R**

**Per B.M. Biyani, AM:**

Feeling aggrieved by order of first-appeal dated 30.05.2022 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"], which in turn arises out of intimation dated 29.03.2019 passed by learned ACIT, TDS, CPC, Ghaziabad ["AO"] u/s 200A of Income-tax Act, 1961 ["the Act"] for Financial Year 2018-19 [Quarter-2, Form No. 26QB] relevant to Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on following grounds:

*“Ground 1) That the learned AO erred in levying late fees u/s 234E and charging Interest u/s 201 without considering the fact that the appellant has already filled form 26QB along with tax paid within due date while late fees has been imposed on second form 26QB filled mistakenly on similar transaction.*

*Ground 2. That the learned CIT (Appeals) erred in dismissing the appellant's appeal, failing to acknowledge that the second filing of Form 26QB was a result of inadvertent error and that the tax was duly paid within the prescribed time in the initial filing, thereby rendering the late fees and interest levied by the AO is unjustified.”*

2. The registry has informed that the present appeal is delayed by 965 days and therefore time-barred. The assessee has filed an application/affidavit for condonation of delay; the same is scanned and re-produced for an immediate reference:

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BEFORE THE HON'BLE INCOME TAX APPELLANT TRIBUNAL, INDORE BENCH

In the matter of :- AMEY JAIN

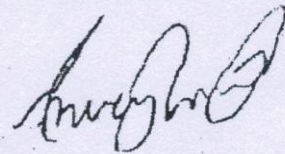
Assessment Year :- 2019-20

PAN NO. :- AQBPJ1217D

APPLICATION FOR CONDONATION OF DELAY

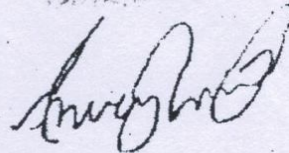
Most respectfully, the Appellant submits as under:

1. That the present appeal is being preferred against the order passed by the Learned Commissioner of Income Tax (Appeals) dated 30.05.2022.
2. That the said order was served on 30.05.2022, and accordingly, the appeal ought to have been filed on or before 29.07.2022. However, the present appeal has been filed on 22.03.2025, resulting in a delay of 967 days, for which condonation is humbly sought.
3. That the Appellant is a Non-Resident Indian (NRI) and has been residing in the United States of America during the relevant period.
4. That the delay occurred due to the fact that the Appellant had forgotten the password of his registered email ID (a.ameyjain@gmail.com), which was linked to the Income-tax Department's portal. The recovery of the said email ID was not possible as the registered mobile number for password recovery was an Indian mobile number, which was not accessible to the Appellant while residing abroad.



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5. That, due to the above circumstances, the Appellant was unaware of the order passed by the Learned Commissioner of Income Tax (Appeals) since the same was served on registered email id.
6. That it was only upon the Appellant's return to India in the month of October, 2024 that he became aware of the appellate order.
7. That, immediately upon becoming aware of the situation, the Appellant engaged counsel; Adv. Chintan Mehta to prefer the appeal. However, due to inadvertence and lapse on the part of the said counsel, the appeal could not be filed, resulting in further delay.
8. That thereafter, the Appellant appointed CA Mithilesh Dashora of SRAM & Co., who filed the present appeal on 22.03.2025, without any further loss of time.
9. That the matter on merits pertains to double deposit of TDS on purchase of property, where initial due Tds payment was duly deposited within time and second was mistakenly deposited again almost after a year. However, the department erroneously levied interest under section 201 amounting to Rs. 8,794.50 and penalty under section 234E amounting to Rs. 53,330/-, aggregating to Rs. 62,120/-, on second Tds deposit despite the fact that the case involves excess deposit of TDS and no loss of revenue.



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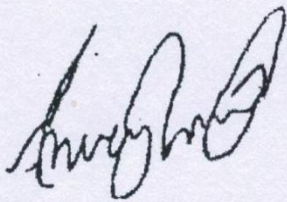
10. That, the delay in filing the appeal was neither intentional nor deliberate, but occurred due to circumstances beyond the control of the Appellant.

11. That, the Appellant has a strong and bona fide case on merits, and grave injustice would be caused if the appeal is dismissed on technical grounds without adjudication on merits.

PRAYER

In view of the facts stated above and in the interest of justice, the Appellant most humbly prays that this Hon'ble Tribunal may kindly be pleased to condone the delay of 967 days in filing the present appeal and admit the same for adjudication on merits.

The Appellant shall remain ever grateful.



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(AMEY JAIN)

(APPELLANT)

3. The averments made by assessee in above application, which are self-explanatory and which do not require repetition, were discussed and the Ld. DR for revenue does not have any objection if the bench condones delay and accordingly left it to the wisdom of bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in ***Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387*** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the facts of case, the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

4. Ld. AR for assessee explained following facts of case:

- (i) The assessee-individual is an NRI.
- (ii) On 09.05.2018, the assessee purchased a property for Rs. 53,43,000/- from R.R. Jain Infra (PAN: AAQFR9972C). The copy of registered purchase-deed is filed.

- (iii) On 11.05.2018, the assessee deposited TDS of Rs. 53,430/- [1% of purchase consideration of Rs. 53,43,000/-] and filed Form No. 26QB u/s 194-IA of the Act to Income-tax Department. Copies of Form No. 26QB & Form No. 26AS are placed in Paper-Book.
- (iv) Yet on 26.03.2019, due to ignorance and mistakenly, the assessee re-deposited TDS of 53,430/- [Rs. 100/- + Rs. 53,330/-] and re-filed Form No. 26QB on the same transaction. Copies of Form No. 26QB & Form No. 26AS are placed in Paper-Book.
- (v) The Ld. AO has processed the Form No. 26QB re-filed by assessee on 26.03.2019 and generated intimation dated 29.03.2019 u/s 200A, creating a demand of Rs. 8,794.50 on account of interest (+) Rs. 53,330/- on account of late fee u/s 234E, aggregating to Rs. 62,124.50 (rounded off to Rs. 62,120/-).
- (vi) Although the assessee is not against the TDS of Rs. 53,430/- mistakenly re-deposited since the payee "R.R. Jain Infra" has already claimed credit of same, the assessee is aggrieved by interest of Rs. 8,794.50 and late fee of Rs. 53,330/- u/s 234E levied by AO.
- (vii) The assessee filed first-appeal to CIT(A) but did not get any success, hence present appeal before ITAT.

5. Thus, the assessee is contesting for deletion of demand of interest of Rs. 8,794.50 and late fee of Rs. 53,330/- u/s 234E created by AO.

6. We have heard learned representatives of both sides and carefully considered the facts of case in the light of legal provisions of the Act.

7. In so far as the interest of Rs. 8,794.50 levied by AO is concerned, we find that the same has arisen on account of re-deposit of TDS made by assessee on 26.03.2019, which was admittedly beyond the prescribed time. It is an undisputed position that the assessee had originally deducted and deposited TDS within time on 11.05.2018. The re-deposit on 26.03.2019 is a duplicative payment made under a mistaken belief and not a case of primary default. However, once such re-deposit has been made and credit thereof has been availed by payee, the Revenue has been deprived of corresponding interest which would otherwise have been recoverable from payee. To that extent, there is a clear loss to Revenue. Hence, the levy of interest by AO on the delayed re-deposit cannot be faulted. **Accordingly and for this reason, we uphold the action of AO in charging interest of Rs. 8,794.50. The assessee's claim is rejected.**

8. In so far as the late fee of Rs. 53,330/- charged by AO u/s 234E is concerned, we are guided by following decision taken by ITAT, Ahmedabad in ***G.B. Builders v. ACIT-CPC (TDS) [IT Appeal no. 626 (Ahd.) of 2018, dated 25-4-2022]***. The relevant finding are as under:

*"6. We have heard the rival contentions and perusal the material on record. We note that in the present facts, the assessee had initially deposited the entire TDS in respect of purchase of immovable property on 24-11-2014 u/s 194-IA of the Act i.e. within the due date from purchase of immovable property. Due to certain technical error committed (incorrect interchanging of PAN numbers of*

buyer and seller in online filing of Statement 26QB), the seller could not get credit of TDS and later, on the advise of Revenue authorities again the buyer (the assessee) paid the TDS again amount alongwith interest for late deposit. The CPC, Ghaziabad processed revised form 26QB filed on 16-12-2015 u/s. 200(A)(1) and on 7-02-2016 raised a demand of late fee of Rs. 74,600/- u/s. 234E of the Act. In appeal, the Ld. CIT(A), mechanically relied upon the jurisdictional High Court decision in the case of Rajesh Kourani vs. Union Of India (2017) 83 taxmann.com 137 (Gujarat) to uphold levy of late filing fee of Rs. 74,600/- u/s. 234E of the Act for late filing of TDS statement. However, in our considered view, the issue for consideration in Rajesh Kourani case supra and the issue for consideration in the assessee's case are different. The Gujarat High Court in the case of Rajesh Kourani supra held that section 234E is a charging provision creating a charge for levying fee for certain defaults in filing statements and fee prescribed under section 234E and could be levied even without a regulatory provision being found in section 200A for computation of fee. The assessee is not disputing that at the time of filing of revised Form 26QB on 16-12-2015, s. 234E of the Act (which came into effect from 1-6-2015) was in force and in effect. The issue for consideration is when the assessee had initially deposited TDS u/s 194-IA of the Act and accordingly filed TDS statement within due date from time when the immovable property was transferred, but committed a technical default while filing the TDS Statement resulting into non-grant of TDS credit, compelling the assessee to again deposit TDS along-with interest, can the assessee be penalized for late filing of revised TDS Statement u/s 234E of the Act. In our considered view, the Ld. CIT(A) has not taken a judicious view of the matter while upholding levy of late filing fee of Rs. 74,600/- u/s. 234E of the Act in the particular facts of the case. The Ld. CIT(A) did not take into consideration the peculiar facts and circumstances of the instant case, where the assessee had initially deposited TDS u/s 194-IA of the Act on purchase of immovable within due date on 24-11-2014. Due to a technical error, since the seller could not get credit of TDS deposited in the initial deposit, on the advise of Revenue Authorities, the assessee had again deposited TDS along-with late filing interest Rs. 46,977/- payable for 14 months on 16-12-2015. Ld. CIT(A) also did not appreciate that had the assessee at the time of initial deposit of TDS mentioned the correct PAN numbers i.e. had the assessee not committed the aforesaid technical error, there would have been no question of levy of interest u/s 234E of the Act. The Ld. CIT(A) also did not take cognizance of the fact that in the facts of the case, there was no loss caused to the Revenue. While, respectfully following the jurisdictional High Court in the case of Rajesh Kourani supra, we are also of the view that machinery provisions cannot override the substantive provisions, but in the instant facts, the issue for consideration and facts before us are different as compared to Rajesh Kourani case (supra), on which reliance has been mechanically placed by Ld. CIT(A). It is a settled law as held by the Hon'ble Gujarat High Court in the case of Rajkot Engineering Association v. UOI [1986] 26 Taxman 60 (Gujarat) that the Revenue authorities should adopt a judicial approach and consider all attendant circumstances. Again, the Gujarat High Court in the case of Trust For Reaching The Unreached Through Trustee v. Commissioner of Income-tax (Exemptions), Ahmedabad [2021] 126 taxmann.com 77 (Gujarat) has stressed the need for the Revenue Authorities taking a judicious approach. The Gujarat

*High Court in the case of Sarvodaya Charitable Trust v. ITO [2021] 125 taxmann.com 75 (Gujarat) held that the approach of the authorities should be justice oriented so as to advance the cause of justice. The Gujarat High Court in the case of CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax Officer or before the appellate authority by assigning sufficient cause. In view of various authorities cited above, we are of the considered view that Ld. CIT(A) did not consider the facts and attendant circumstances of the case while upholding levy of penalty u/s 235E of the Act. Once the assessee has initially deposited TDS and furnished Statement in Form 26QB within time, but committed a technical error while depositing TDS resulting in non-grant of TDS to transferor, compelling it to again deposit TDS along-with interest for late deposit, then, in the interests of justice and considering the fact that no loss is caused to the Revenue, the assessee cannot be saddled with levy of late filing fee u/s 234E of the Act, taking a judicious view of the matter. In result, we hold that Ld. CIT(A) has erred in law and in facts in upholding levy of penalty u/s 234E of the Act. 7. In the result, appeal of the assessee is allowed."*

9. Following same rationale and reasoning as taken by learned Ahmedabad bench of ITAT in above decision, we are inclined to hold that in present case when the assessee had duly deposited TDS and filed Form No. 26QB within the prescribed time initially, and the subsequent payment and filing on 26.03.2019 was merely a duplication arising out of ignorance and mistake, it is not a case of original default in compliance of provisions of section 194-IA. In such peculiar facts and in the light of decision of ITAT, Ahmedabad and also adopting a justice-oriented approach, we are of the considered view that the assessee should not be saddled with the liability of late fee u/s 234E. **Accordingly, we direct the AO to delete the late fee of Rs. 53,330/-.** The assessee's claim is accepted.

**10. Resultantly, this appeal is partly allowed.**

Order pronounced in open court on 27/03/2026

Sd/-

(PARESH M. JOSHI)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 27/03/2026

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore