

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA Nos. 6007 &5927/MUM/2025
Assessment Years: 2018-19 & 2017-18**

Hariom Developers
A/102, Sweta Park, Daulat
Nagar, Borivali East, Mumbai
- 400066.

Vs. Income Tax Officer, Ward 42(1)(2)
Kautilya Bhavan, Mumbai

PAN NO. AADFH1122M

Assessee

Respondent

Assessee by	:	Ms. Ridhisha Jain, CA (Virtually appear)
Revenue by	:	Shri Hemanshu Joshi, SR. DR
Date of Hearing	:	12/03/2026
Date of pronouncement	:	07/04/2026

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Assessee arise from the separate orders of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)"], dated 28.02.2024 and 23.10.2023, for the Assessment Years (AY) 2018-19 and 2017-18, respectively. As the issues involved in these appeals are identical, they were heard together and are being disposed of by this consolidated order for the sake of convenience.



2. At the threshold, we address the significant delay in the filing of these appeals—specifically 514 days for AY 2018-19 and 635 days for AY 2017-18. The Appellant has moved an application for condonation of delay, supported by an affidavit from a partner of the firm. The main explanation of assessee is that the delay was not a product of willful negligence, but rather a consequence of misplaced trust in their professional consultant. The Assessee contends that the relevant papers were duly handed over to the then-Authorized Representative (AR) for filing. However, the appeals remained unfiled and languished in the AR's office. The Assessee remained under the *bona fide* impression that the appeals were pending before this Tribunal and only realized the gravity of the situation when the Department initiated recovery proceedings through bank account attachments. In both the appeals, reasons for the delay are identical and therefore for ready reference, we reproduce the contents of the affidavit for A.Y. 2018-19.

“2. That the order of Hon'ble CIT(A) for A.Y. 2018-19 was received on email on 28/02/2024. Against the said order an appeal was to be filed on or before the Hon'ble ITAT within two months from the end of receipt of the order i.e. by 30/04/2024 but couldn't be filed because the accountant who was handling our matter had given the papers/order to our CA Shri Pradeep Kumar Dholariya's office, who prepared the appeal paper.

3. That we were under the impression that appeal before Hon'ble ITAT might have already been filed by the office of CA Shri Pradeep Kumar Dholariya. However, the same remained to be prepared and lying in his office.

4. That we came to know only when our accounts were attached by department.



5. *That on approaching department we were appraised that appeal has been dismissed.*
6. *That on coming to notice of the said facts we approached M/s Mohanlal Jain & Co. CA's for doing the needful on 09/09/2025.*
7. *That during this period they were busy in filing ROI till 15/09/2025 and thereafter in preparing and filing Tax Audit Report.*
8. *That they prepared the necessary papers for filing before Hon'ble ITAT on 24/09/25 and asked to pay appeal fee of Rs.10,000/-.*
9. *That we were advised to make payment of appeal fee. We duly deposited the fee on 25/09/2025 and ultimately filed the appeal before Hon'ble ITAT on 25/09/2025.*
10. *That the delay in filing appeal by 514 days is due to unavoidable circumstances and reasons discussed above."*

3. We have heard the rival submissions and scrutinized the record on the issue of condonation of delay.. It is a settled canon of law, as enunciated by the Hon'ble Supreme Court in **Collector, Land Acquisition Vs. MST. Katiji & Ors., [1987] 167 ITR 471 (SC), dated 19.02.1987**, that the expression "sufficient cause" must be interpreted elastically to sub serve the ends of justice. The Hon'ble Supreme Court held that *when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay.*

4. In the present case, the delay was occasioned by the professional lapse of the Assessee's counsel. It is a well-established



principle that for a mistake on the part of the counsel, a litigant should not be made to suffer, provided the litigant has acted with reasonable diligence. The subsequent actions of the Assessee—promptly engaging new counsel and filing the appeals immediately after the bank attachment—demonstrate a lack of *mala fide* intent. While the delay is substantial, we find that the explanation offered constitutes "sufficient cause" within the meaning of Section 253(5) of the Income Tax Act. To shut the doors of justice at the threshold on technicalities would result in a miscarriage of justice. Accordingly, in the interest of substantial justice, the delay is condoned, and the appeals are admitted for adjudication on merits.

5. Turning to the merits, we observe that the Ld. CIT(A) dismissed the appeals *ex parte*, primarily on account of non-representation. The Ld. CIT(A) observed that the Assessee failed to respond to statutory notices, thereby treating the Assessee's conduct as a "dilatory tactic. The relevant finding of the ld. CIT(A) is reproduced as under:

"7. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted opportunities as elaborated above. No details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the assessment order. During the appellate proceedings the appellant was given opportunities to put forth his case, but he did not upload any response despite service of notice(s). Considering all the facts and the circumstances of the case no interference with the assessment order of the AO is called for. The appellate proceedings cannot be allowed to be held hostage by dilatory tactics on the part of the appellant and a complete disdain for statutory notices. Therefore, I find no infirmity in the assessment order passed by the assessing officer u/s 143(3) r.w.s 143(3A) & 143(3B) of the I.T. Act, 1961 dated 06.04.2021."



6. However, as explained in the affidavit, the Assessee's failure to appear was tied to the same professional negligence that caused the delay in filing these appeals. It is the policy of law that an assessee should be taxed only on their lawful income, and the appellate process should ideally culminate in an order on merits rather than a dismissal *in limine* for default. We find that the Ld. CIT(A) did not have the benefit of the Assessee's documentation or arguments, and in light of the principles of natural justice (*audi alteram partem*), we deem it fit and proper to afford the Assessee one final opportunity to present its case. Consequently, we set aside the impugned orders and restore the matters to the file of the Ld. CIT(A) for a fresh adjudication on merits. The Assessee is directed to be diligent and provide all necessary evidence to support its contentions. The Ld. CIT(A) shall decide the matter afresh after providing the Assessee a reasonable opportunity of being heard.

7. In the result, both appeals are treated as **allowed for statistical purposes.**

Order pronounced in the open Court on 07/04/2026.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 07/04/2026
Karishma J. Pawar, Sr. P.S.



ITA No. 6007 &5927/Mum/2025
Hariom Developers

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai