

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1731/PUN/2025
Assessment year : 2015-16**

BT Kadlag Construction Pvt Ltd Shop No.2, Mohit Apartment, Vir Sawarkar Nagar Jain Road, Nashik – 422191	Vs.	DCIT, Circle – 1, Nashik
PAN: AACCB0833B		
(Appellant)		(Respondent)

Assessee by : Shri Jay Bhansali
Department by : Shri Mukul Kulkarni (virtually)

Date of hearing : 09-04-2026
Date of pronouncement : 15-04-2026

ORDER

PER ASTHA CHANDRA, JM:

This appeal filed by the assessee is directed against the *ex-parte* order dated 26.12.2022 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2015-16.

2. There is a delay of 869 days in filing of the appeal before the Tribunal for which the assessee has filed condonation application along with affidavit explaining the reasons for such delay. It has been explained in the condonation application that the delay has occurred in filing of the appeal before the Tribunal due to failure on the part of two consultants of the assessee who were looking after the tax matters. The contents of the affidavit read as under:

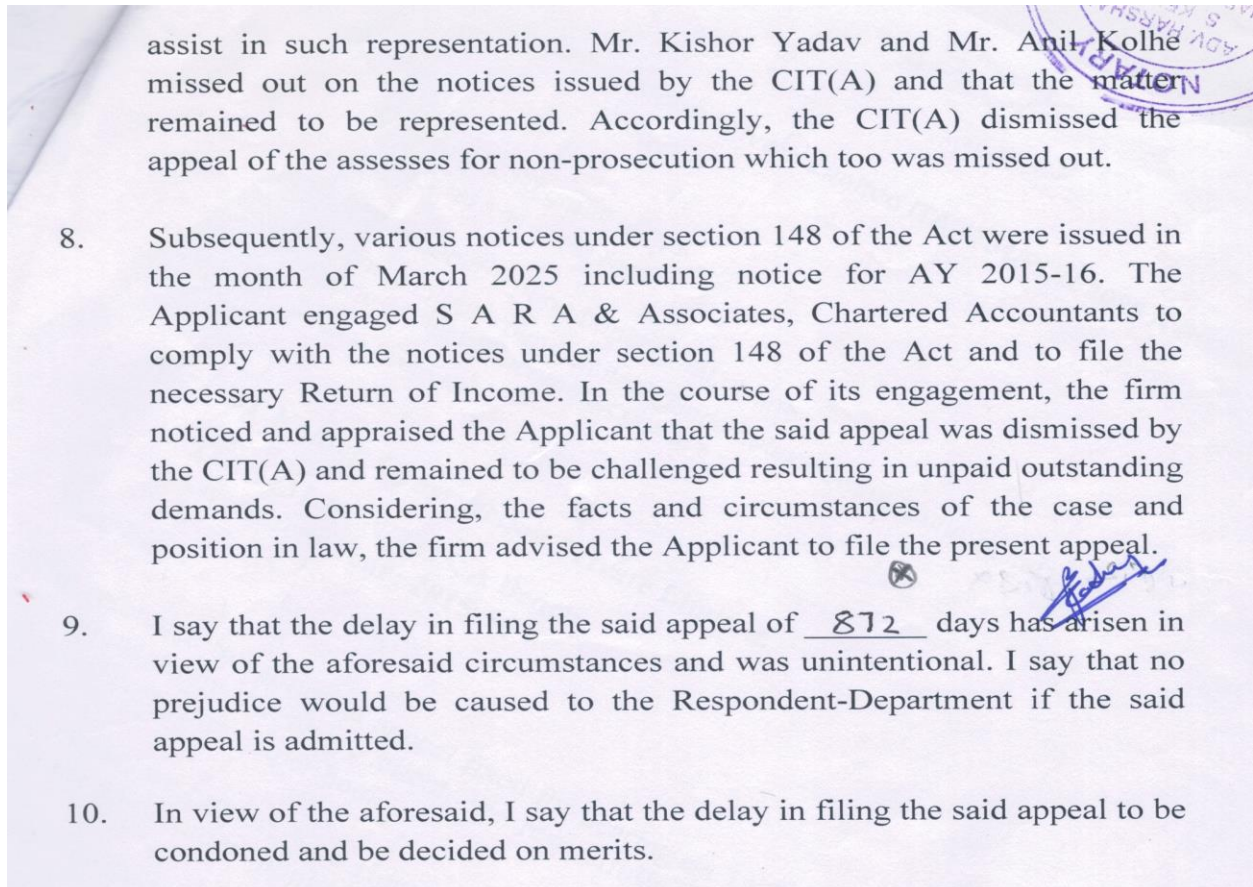
DATE <u>9/7/2025</u> THIS DOCUMENT CONTAINS <u>02</u> Total Pages... <u>2</u>	AFFIDAVIT	JUL 2023 STPHC ATC
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I, Bhairavnath Trimbak Kadlag s/o Trimabk Shankar Kadlag, the Director of B T Kadlag Construction Private Limited, aged 54, residing at Plot No.747, Lane no. 03 Lawate Nagar Nashik -422008 and identified by my Permanent Account Number ABPPK7318H do hereby solemnly affirm and state as follows: -

1. I say that present appeal is being filed against the order of the Hon'ble Commissioner of Income-tax (Appeals) [hereinafter referred to as "the Hon'ble CIT(A)"] dated 26.12.2022 under section 250 of the Act in the case of B T Kadlag Construction Private Limited [hereinafter referred to as "the assessee" or "the Applicant"]. The time limit to file appeal is 60 days from the date of receipt of the CIT(A) order i.e. in the present case 24.02.2023. Therefore, there is a delay of 872 days in filing the said appeal.

I say that the Applicant is engaged in the business of civil road construction, predominately for the Government and Public Sector Undertakings and has earned income mainly from government contracts. Public Works Department [PWD] and Nashik Municipal Corporation [NMC] is the main principal contractor for the Applicant.

3. I say that the case of the Applicant was picked up for limited scrutiny and various notices were issued by the Assessing Officer from time to time. The Applicant filed detailed replies along with relevant supporting documents. Thereafter, the Assessing Officer completed assessment proceedings vide order dated 27.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") assessing total income at Rs. 4,44,67,870/- after disallowing sub-contracting expenses of Rs. 2,04,57,980/-.
4. I say that the Applicant filed an appeal against the above assessment order [Appeal No. CIT(A), Nashik - 1/10447/2017-18] before the Hon'ble CIT(A) on 26.01.2018. During the course of appellate proceedings, the Hon'ble CIT(A) issued notices under section 250 of the Act calling for appellants submission in respect of appeal filed.
5. Subsequently, the Hon'ble CIT(A) passed order dated 15.04.2025 under section 250 of the Act dismissing the appeal of the Applicant for non-prosecution.
6. Aggrieved, the Applicant has preferred the present appeal before the Hon'ble Income-tax Appellate Tribunal (hereinafter referred to as "the Hon'ble Tribunal").
7. I say that the taxation matters of the Applicant were entrusted with one Mr. Kishor Yadav and Mr. Anil Kolhe. Mr. Kishor Yadav has been employed with the Applicant since 2017 and has been actively looking after compliances, assessments and appeal of the Applicant. Mr. Anil Kohle is a Chartered Accountant who been separately engaged to attend to audit, compliances, assessment and appeals of the Applicant and has been associated with the Applicant since 2005. Mr. Anil Kolhe was engaged to represent in the said matter and that Mr. Kishor Yadav was to



3. Further, the said two consultants also filed their affidavits admitting the fact of the reason cited by the assessee in its condonation application for delay in filing of the appeal before the Tribunal, the copies of affidavits are placed at pages 1 to 6 of the paper book. Relying on various decisions the Ld. Counsel for the assessee submitted that the delay in filing of the appeal should be condoned.

4. The Ld. DR on the other hand strongly opposed the condonation application filed by the assessee.

5. We have heard the rival arguments made by both the sides on the issue of delay in filing of the appeal and considered the contents of the condonation

application filed along with the affidavit of the assessee and also the affidavits filed by the consultants.

6. We find the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) has held that when substantial justice and technical considerations are pitted against each other, 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 non-deliberate delay. 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.

7. We find recently the Hon'ble Supreme Court in the case of Inder Singh Vs. The State of Madhya Pradesh reported in 2025 LiveLaw (SC) 339 has held as under:

“14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.”

8. Considering the totality of the facts of the case and in the light of the decisions of Hon'ble Supreme Court cited (supra), the delay in filing of the appeal is condoned and the appeal is admitted for adjudication.

9. Facts of the case, in brief, are that the assessee is a civil contractor and filed its return of income on 29.09.2015 declaring total income of Rs.2,40,09,890/-. The

case was selected for 'limited scrutiny' under CASS. Accordingly, notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 04.04.2016 was issued and served on the assessee. Thereafter, notice u/s 142(1) of the Act was issued on 13.06.2017 calling for certain information in response to which the authorized representative of the assessee attended before the Assessing Officer from time to time and filed the requisite details. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.2,04,57,980/- to the total income of the assessee and determined the total income at Rs.4,44,67,870/-.

10. In appeal the Ld. CIT(A) / NFAC dismissed the appeal filed by the assessee for non-prosecution by observing as under:

3. Notice u/s 250 of the I.T Act was issued to the appellant on 23.11.2022 asking the appellant to file details in support of the grounds of appeal on or before 08.12.2022. However, appellant did not reply to the notice. Accordingly, a 2nd notice u/s 250 of the I.T Act was issued on to the appellant on 08.12.2022 asking the appellant to file details in support of the grounds of appeal on or before 23.12.2022. In this notice the appellant was duly informed that this is the final opportunity granted. However, appellant again did not reply to the 2nd notice too till date. In absence of details in support of GOA filed, appeal cannot be decided. The non-compliance to the 2 notices issued shows that the appellant is not interested in pursuing its appeal. The order of A.O is upheld and the appeal stands **DISMISSED**.

11. Aggrieved with such order of the Ld. CIT(A) / NFAC the assessee is in appeal before the Tribunal.

12. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) / NFAC provided only 2 opportunities and thereby dismissed the appeal of the assessee. Further, the Ld. CIT(A) / NFAC has not decided the appeal on merit and has

simply dismissed the appeal for want of prosecution which is not as per the provisions of section 250(6) of the Act.

13. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the Ld. CIT(A) / NFAC.

14. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We find the Assessing Officer in the instant case made addition of Rs.2,04,57,980/- in respect of payments made to four (4) sub-contractors holding such payments as not genuine and proper business expense. We find the Ld. CIT(A) / NFAC dismissed the appeal for want of prosecution, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate its case by filing the requisite details. It is also his submission that the Ld. CIT(A) / NFAC has not decided the issue on merit and dismissed the same for want of prosecution.

15. A perusal of the order of the Ld. CIT(A) / NFAC shows that the Ld. CIT(A)/NFAC has not decided the appeal on merit but has simply dismissed the same for want of prosecution. We find the provisions of section 250(6) of the Act which read as under:

“250(1).

...

(6) The order of the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”

16. Since it is the submission of the Ld. Counsel for the assessee that given an opportunity the assessee is in a position to substantiate its case by filing the requisite details, therefore, considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(A) / NFAC with a direction to grant a reasonable opportunity to the assessee to substantiate its case by filing the requisite details and decide the issue as per fact and law by passing a speaking order. The assessee is also hereby directed to submit the requisite details before the Ld. CIT(A) / NFAC on the appointed date without seeking any adjournment under any pretext, failing which the Ld. CIT(A) / NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

17. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 15th April, 2026.

Sd/-
(R. K. PANDA)
VICE PRESIDENT
पुणे Pune; दिनांक Dated : 15th April, 2026
GCVSR

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. DR, ITAT, 'A' Bench, Pune
4. The concerned Pr.CIT, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	09.04.2026		Sr. PS/PS
2	Draft placed before author	09.04.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			