

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. 783/Ind/2025(AY:2017-18)

ITA No.784/Ind/2025(AY:2017-18)

| | | |
|---|--|----------------------|
| Anita Kesari, 101, Ankur Ally Apartment, Scheme No.54, Satya Sai Circle, Indore | बनाम/ Vs. | ITO 1(1) Indore |
| (Assessee/Appellant) | | (Revenue/Respondent) |
| PAN: ATOPK2918A | | |
| Assessee by | Shri Milind Wadhvani & Ms. Shradha Piplodia, ARs | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 12.05.2026 | |
| Date of Pronouncement | 21.05.2026 | |

आदेश / O R D E R

Per B.M. Biyani, AM:

The captioned two (2) appeals are filed by assessee, the details are as under:

- (i) **ITA No. 783/Ind/2025** is directed against the order of first-appeal dated 26.03.2025 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["Ld. CIT(A)"], which in turn arises out of penalty-order dated 24.01.2024 passed by Assessment Unit of Income-tax Department ["Ld. AO"] u/s 271AAC(1) of the Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18.

(ii) **ITA No. 784/Ind/2025** is directed against the order of first-appeal dated 26.03.2025 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["Ld. CIT(A)"], which in turn arises out of penalty-order dated 15.11.2023 passed by Assessment Unit of Income-tax Department ["Ld. AO"] u/s 272A(1)(d) of the Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18.

2. The registry has informed that both of these appeals are delayed by 97 days and therefore time-barred. The assessee has filed separate applications/affidavits in both of these appeals for condonation of delays; the affidavits are worded identical, hence the affidavit filed in one of these appeals is scanned and re-produced for an immediate reference:



मध्य प्रदेश MADHYA PRADESH

DN 795442

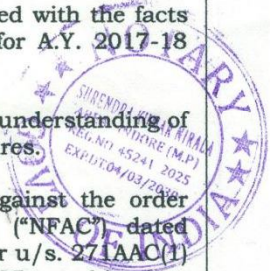
Serial No. 1962/2026
Date - 4 MAY 2026

AFFIDAVIT

**TO BE PRESENTED BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
INDORE IN SUPPORT OF CONDONATION OF DELAY**

I, Smt. Anita Kesari (PAN: ATOPK2918A), aged about 57 years, do hereby solemnly affirm and state as under:

1. That I am competent to affirm this affidavit and I am fully acquainted with the facts and circumstances concerning my appeal ITA No. 783/IND/2025 for A.Y. 2017-18 before this Hon'ble Tribunal.
2. That, I am an elderly person and do not possess much knowledge or understanding of computers, internet technology, and the income tax laws and procedures.
3. That the present appeal before this Hon. Tribunal is preferred against the order passed u/s. 250 by the Ld. National Faceless Appeal Centre ("NFAC") dated 26.03.2025, for Assessment Year 2017-18 arising out of Penalty order u/s. 271AAC(1) dated 24.01.2024. However, the present appeal was filed on 05.09.2025, resulting in a delay of 96 days in filing the appeal.
4. That the NFAC appellate order dated 26.03.2025 passed by NFAC was served electronically and not through physical mode.
5. That all hearing notices as well as the appellate order were issued within a very short span of time and were sent to the email address of my daughter, Shweta Kesari who could not regularly check her email and, therefore, could not inform me about the same. Consequently, I remained unaware of the passing of the said order.



SWORN BEFORE ME
SHRENDRA KUMAR NIRALA
A. Kesari

6. Subsequently, in September 2025, upon receipt of an intimation letter dated 03.09.2025, I forwarded the same to the tax consultant, who logged into my Income Tax e-filing portal and informed me that orders u/s. 250 had been passed in my case and appeals against the same was required to be filed before Hon. ITAT. It was at this point of time that I became aware, of the said order for the first time.

7. That immediately thereafter, the present appeal was filed on 05.09.2025, albeit with a delay of 96 days.

8. That the delay in filing the appeal occurred solely due to lack of knowledge of the passing of the said order, as the same was served electronically on my daughter's email address and not through physical mode.

9. The delay was neither intentional nor due to any negligence or mala fide intention.

10. In the interest of justice, I humbly pray that the delay in filing the appeal be condoned and the matter be admitted for hearing on merits.

Verification

I, Smt. Anita Kesari, do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

Solemnly affirmed at Indore on this 4 day of May, 2026.

Deponent
(Signature) A. Kesari

Smt. Anita Kesari

The averments made by assessee in above affidavit, 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 averments made in affidavit, 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.

ITA No. 783/Ind/2025:

3. Learned Representatives of both sides are *ad idem* that the present appeal pertains to penalty of Rs. 2,26,020/- imposed by the Ld. AO u/s 271AAC(1) in respect of addition of Rs. 37,67,000/- made u/s 69A r.w.s. 115BBE in the assessment-order dated 21.05.2023 passed u/s 147 r.w.s. 144 of the Act. It is further agreed by both sides that the quantum appeal filed by the assessee, being ITA No. 902/Ind/2024 against the aforesaid assessment-order, has already been adjudicated by this Bench vide order dated 29.04.2025 whereby the assessment has been set aside and restored to the file of the Ld. AO for framing a de novo assessment. Since the very foundation of the impugned penalty is dependent upon the outcome of the quantum proceedings, the fate of the penalty cannot be decided independently at this stage. Therefore, considering the consensus of both parties and in the interest of justice, we deem it proper to restore the

present penalty matter also to the file of the Ld. AO for fresh adjudication in accordance with law after giving due effect to the outcome of the quantum proceedings and after affording adequate opportunity of hearing to the assessee. **Accordingly, this appeal is allowed for statistical purposes.**

ITA No. 784/Ind/2025:

4. We have heard learned Representatives of both sides and carefully perused the material available on record. Our findings are as under:

- (i) The Ld. AO imposed penalty of Rs. 10,000/- u/s 272A(1)(d) vide penalty-order dated 15.11.2023 on account of assessee's failure to comply with notice issued u/s 142(1) dated 23.01.2023 during the course of assessment proceedings. The explanation advanced by the Ld. AR is that the assessee failed to comply because the notice was issued electronically and no physical notice was served. In our considered view, the said explanation does not constitute a reasonable cause for non-compliance, particularly when the assessee was otherwise aware of the assessment proceedings, as evident from the fact that the assessee subsequently filed first appeal against the assessment-order before the Ld. CIT(A) within the prescribed time.
- (ii) Further, before levying the impugned penalty, the Ld. AO afforded sufficient opportunities to the assessee through notices dated 21.05.2023, 07.09.2023 and 28.09.2023. However, despite such

opportunities, the assessee remained non-compliant and failed to furnish any response before the Ld. AO. Consequently, the Ld. AO proceeded to impose penalty.

Therefore, we do not find any infirmity in the action of the Ld. AO in levying penalty u/s 272A(1)(d). **Accordingly, this appeal filed by the assessee is dismissed being devoid of merit.**

5. Resultantly, ITA No. 783/Ind/2025 is allowed for statistical purposes and ITA No. 784/Ind/2025 is dismissed.

Order pronounced in open court on 21/05/2026

Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 21/05/2026

Patel/Sr. PS

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

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore