

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
**In The Income Tax Appellate Tribunal, “SMC”  
Rajkot Bench, Rajkot**

**Before Dr. Arjun Lal Saini, Accountant Member**

आयकरअपीलसं./ITA No. 166/RJT/2026  
(निर्धारणवर्ष/Assessment Year: (2019-20))

Saurabh Rajnikant Shah 105, Maruti Apartment, Rajkot – 360001	Vs.	ITO, wd – 1(1)(1), Rajkot The Income Tax Office, New Aayakar Bhawan, Vatiaka, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGDPS1290F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Ms. Shelly Maheshwari, Ld. AR  
Respondent by : Shri Anadi Dixit, Ld. Sr. DR  
  
Date of Hearing : 11/03/2026  
Date of Pronouncement : 08/05/2026

**ORDER**

**Per, Dr. Arjun Lal Saini, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year 2019-20, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by Commissioner of Income-tax (Appeals), dated 29.09.2025, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(1) of the Act, on 16.11.2019.

2. When the matter was called for hearing, the Learned Counsel for the assessee at the outset submitted that the appeal has been filed by the assessee belatedly. The

learned Counsel adverted my attention to the affidavit filed in this regard citing reasons for condonation of delay and urged for a benign view and sought condonation of delay of 71 days in filing the appeal before the Tribunal. A perusal of the affidavit gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned.

3. There is also delay in filing the appeal before Ld.CIT(A). Before, Ld.CIT(A), the appeal filed by the assessee is barred by limitation by 1987 days. The assessee filed Affidavit before the Bench, citing the reasons for delay before ld.CIT(A). The contents of the Affidavit is reproduced below:

*"1. The Intimation/order of the Id. Centralized processing Center (CPC) u/s. 143(1) is dated 16.11.2019 which was also received by the appellant on 16.11.2019 The appeal could have been filed up to 15.12.2019. However, the appeal has been filed on 23.05.2025 resulting in a delay of 1984 days.*

*2. Period of Covid-19 - In terms of Supreme Court order in Court on Its Own Motion Civil Application No. 3 of 2020, the period from 15.03.2020 to 30.05.2022 shall be ignored due to Covid. If this period is ignored, the delay remains of 1087 Days. The delay hence happened just when period of Covid started, which had suffered the humanity utmost.*

*3. That, after continuous and repetitive efforts for recovery of amount deducted in the form of TDS; which was also shown in Form 16 (Annexure - A) and after informing the Manager of the Company about the disallowance of credit in the intimation received due to failure on the part of employer - deductor to deposit such TDS to the credit of Central Government; it was informed by the company that same will be paid after some time and was advised to file the return claiming refund of TDS deducted by them and thus the assessee waited for the company to comply and pay the amount to Government. The mails are also annexed for your ready reference (Annexure - B).*

*4. Then again, a letter was received by the assessee again stating the same fact; that the amount deducted will be paid in some months to the government and hence assessee has not taken any step and relied on the company's communication and thus delay happened.*

*5. That to the shock and surprise, after waiting for the long time as communicated by the company assessee get disappointed as no action was taken by the company and hence assessee had replied on the "response to outstanding demand" tab after taking legal*

*advice of Counsel and thus due to intricacies of law, was no aware that appeal needs to be filed and thus followed advice of legal expert.*

*6. Tax laws are undoubtedly complicated and cumbersome. To know and fulfil his obligations the taxpayer depends on the skill and resourcefulness of tax experts. The question arises as to whether the assessee can be made to pay for lapses and laches on the part of his adviser.*

*Thus, the question that whether the litigants should be punished for the mistake committed by the lawyer was answered by the Hon'ble Supreme Court and also by the various High Courts under different situations. In the case of In Rafiq v. Munshilal AIR 1981 SC 1400, Hon'ble Apex Court observed that:*

*"...The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative...we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted." (p. 1401)*

*7. Further reliance is placed on the judgement of Hon'ble Supreme Court in Concord of India Insurance Co. Ltd.'s case; wherein it was observed that a company relies on its legal adviser and there is no reason why when a company or other person retains a lawyer to advise it or him on legal affairs, then reliance should not be placed on such counsel. The learned Judge also observed:*

*"I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on question of law by Courts are sometimes wrong. An amount of latitude is expected in such cases for, to err is human and laymen, as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The Court must, of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause.....If legal adviser's opinions are to be subjected by company managers to further legal scrutiny of their own, an impossible situation may arise...." (p. 511)*

*Thus, an honest, though negligent, mistake of a pleader is a sufficient cause and the party acting on such advice cannot be made to suffer. An excusable oversight of the party's advocate in omitting to implead certain respondents to the appeal was held as sufficient cause, and the delay of five years was condoned- 67 Cal. WN 482.*

*8. It is pertinent to note that, Ld. CIT(A) itself has passed favourable order in the case of assessee itself for the Year AY 2020-21 covering the same issue of TDS disallowance and has also condone the delay in filing of appeal by holding that there was no malafide intention. Order is attached at Annexure C for your ready reference.*

*9. That, tax laws are extremely complicated and tax procedure cumbersome. For the faithful compliance of tax laws and the procedure, dependence upon the tax experts, on their skill and resourcefulness has been on the increase. Such dependence to a certain extent is desirable and will be encouraged as it may lead the assessee to a right direction,*

*educate him about his rights and duties, and encourage him to pay correct taxes. Any bona fide and honest lapse on the part of the tax experts should not be taken serious note of by the authorities functioning under the direct taxes Act. The object is that justice must be done which the authorities under the Acts are required to dispense with.*

*Thereafter, the appellant again visited another counsel/advisor and then came to know about the filing of appeal. After taking the advice of another counsel, appellant had taken immediate step and filed the appeal on 23.05.2025. Therefore, due to these reasons appellant could not make any compliance and hence delay happened.*

*10. The appellant respectfully submits that the delay was unintentional, for no fault of appellant and was inadvertent. There was no mala-fide intention in filing the applicant belatedly. In respectful submission of the present appellant, the delay is due to bona-fide reason, inadvertent and unintentional, and for no fault of the assessee.*

*11. It is submitted that, further reliance is placed on the landmark judgement of Hon'ble Apex Court in Collector, Land Acquisition vs Mst. Katiji 167 ITR 471 (SC), where it was held that: -*

*"(i) Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*

*(ii) 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.*

*(iii) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.*

*(iv) When substantial justice and technical consideration are pitted against each other, the 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.*

*(v) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.*

*(vi) It must be grasped that the judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so."*

*12. Further, in Improvement Trust Civil Appeal No. 2395 of 2008 (SC), vide order dated 09.06.2010, it was held as under: "Unless mala-fides are writ large, delay shall be condoned and matter shall be decided on merits instead of technicalities."*

*13. In the interest of justice the delay so caused may kindly be condoned by this Hon'ble Court.*

*14. The appellant respectfully prays for condonation of delay in filing the appeal in the interest of justice.”*

4. The Ld. Counsel for the assessee submitted that above huge delay in filing appeal before Ld.CIT(A), is mainly due to Covid-19 pandemic. The remaining part delay was due to mistake of the Tax Adviser/Tax Consultant. Hence, delay may be condoned in the interest of justice.

5. On the other hand, the Ld. DR submitted that after excluding the period of Covid-19 pandemic, the balance delay has not been explained by the assessee, therefore, appeal of the assessee should be dismissed on account of delay.

6. I have heard, both the parties on this preliminary issue. I note that the assessee submitted an Affidavit and the petition for condonation of delay before the Ld.CIT(A), citing the reasons for delay, however, the Ld.CIT(A) did not consider the petition for delay. The Ld. Counsel also pointed out that because of mistake committed by the Tax Consultant, the assessee should not be penalised. For that, Reliance is also placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

*"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing.*

Therefore, considering the facts and circumstances, I condone the delay before the Ld.CIT(A).

7. At the outset itself, on merit, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the assessing officer may be granted to the assessee.

8. On the other hand, the Id. DR for the Revenue did not raise any objection, if the matter is restored back to the file of the assessing officer.

9. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. I note that in the assessee's case under consideration, the assessment was carried out u/s 143(1) the Act and the impugned order passed by the Id. CIT(A), is an *ex-prate* order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee. Considering the above facts, I note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). I note that the Id. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. I note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, I restore the matter back

to the file of Ld. CIT(A) for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, I deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order is pronounced in the open court on 08/05/2026.**

**Sd/-**  
**(Dr. Arjun Lal Saini)**  
**लेखा सदस्य/Accountant Member**

राजकोट/Rajkot

दिनांक/ Date: 08/05/2026

**Copy of the order forwarded to :**

1. The assessee
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, RAJKOT
6. Guard File

//True Copy//

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot