IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1285/Ahd/2025
(**निर्धारण वर्ष /** Assessment Year : 2018-19)

Krunal Sanghvi 11, Shree Yogashram Society, Shyamal Corss Road, Ambawadi, Ahmedabad, Gujarat – 380015	**बनाम**/ Vs.	**Income Tax Officer** Ward 5(3)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : BFZPS1574N		
(**Appellant**)	..	(**Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri Chintan Shah, AR
प्रत्यर्थी की ओर से/**Respondent by :**	Shri Abhijit, Sr.DR

Date of Hearing	13/10/2025
Date of Pronouncement	30 /10/2025

(आदेश)/ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as "CIT(A)"), National Faceless Appeal Centre (hereinafter referred to as "NFAC"), Delhi dated 24.04.2024 confirming the levy of penalty for mis-reporting of income as a consequence of under reporting of income in terms of provisions of Section 270A(9) of the Income Tax Act, 1961 (hereinafter referred to as the "Act") and relates to Assessment Year (A.Y.) 2018-19.

2. The appeal is delayed for filing by 338 days. The assessee has filed an application seeking condonation of delay stating as under:

> *"1. That the appellant has filed the accompanying appeal under section 253 of the Income Tax Act, 1961 against the order of CIT (A) dated 24th April, 2024.*
>
> *2. That the appeal was required to be filed on or before 23rd June, 2024 but due to unavoidable circumstances, it could not be filed within the prescribed time limit, resulting in a delay of 344 days.*
>
> *3. That the delay was caused majorly due to administrative delays i.e. change in consultants & accountant etc. The appellant had no malafide intention or wilful negligence in the delay.*
>
> *The delay in filing the appeal has occurred due to a change in the authorized representative/tax consultant handling the appellant's tax matters. The erstwhile consultant failed to apprise the appellant in a timely and appropriate manner regarding the remedy of appeal available before this Hon'ble Tribunal. Upon realization of the situation and upon appointing a new consultant, necessary steps were taken immediately to prepare and file the appeal. The delay was neither deliberate nor due to negligence but was occasioned by the circumstances beyond the control of the appellant.*
>
> *4. That the appellant has a strong case on merits and would suffer irreparable loss if the delay is not condoned.*
>
> *That the Hon'ble Tribunal has the power to condone the delay in filing the appeal if it is satisfied that the delay was due to sufficient cause. Reliance is placed on various judicial precedents, including Collector, Land Acquisition v. Mst. Katiji & Others (1987), where it was held that a liberal approach should be taken while condoning delays.*
>
> *The Hon'ble Courts have time and again emphasized that delays due to change in counsel or procedural miscommunication can constitute sufficient cause. In Lala Shri Bhagwan vs. Ram Chand & Sons Sugar Mills (P) Ltd. (1974) 2 SCC 389, the Supreme Court stated that justice must be done*

on merits rather than be denied on technicalities such as limitation.

In Hindustan Steel Ltd. vs. State of Orissa (1969) 2 SCC 627, the Hon'ble Court recognized that procedural delays should not override the right to be heard, especially when there is no malafide intention.

5. That the appellant, therefore, prays that the Hon'ble Tribunal may kindly condone the delay and admit the appeal for adjudication on merits in the interest of justice."

3. The Ld. DR, however, objected to the condonation of delay stating that the delay was substantial.

4. Having heard both the parties, we find that the assessee has demonstrated sufficient cause for the delay in filing of the present appeal. The delay has been shown to be attributable due to a change in the authorized representative/tax consultant handling the appellant's tax matters. The erstwhile consultant failed to apprise the appellant in a timely and appropriate manner regarding the remedy of appeal available before this Hon'ble Tribunal. The Ld.DR has been unable to point out any falsity in the explanation of the assessee.

5. Courts have been unanimous in holding that the word 'sufficient cause' as per section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice and that merely because there is some lapse of the litigant concerned, that alone is not enough to shut the door of justice to him. That as long as the explanation of the assessee does not smack of *malafides* or it is not put forth as part of a dilatory

strategy, the court must show utmost consideration and when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While holding so, the courts have considered that ordinarily a litigant does not stand to benefit by lodging an appeal late and by refusing the condonation of delay it can result in a meritorious matter being thrown out at the very threshold, defeating the cause of justice. That when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. It has also been noted that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence. A litigant doesn't stand to benefit by resorting to delay. We make a reference in this regard to the decision of Hon'ble Apex Court in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353.

6. In view of the above therefore, noting that the assessee has adduced sufficient cause for the delay in filing the present appeal before us, we consider it to be a fit case for condoning the delay in the interest of justice. The delay of 338 days in the filing of the present appeal is accordingly condoned.

7. The solitary issue for our consideration is the levy of penalty u/s.270A(9) of the Act. The contention of the Ld. Counsel for the assessee before us was that penalty under the said Subsection is levied for specific cases of mis-reporting of income, which are

specified in the said subsection and the assessee's case does not fall within any of the instances specified therein.

For adjudicating the issue, it is relevant to reproduce Section 270A(9) of the Act as under:

> ***"Penalty for under-reporting and misreporting of income.***
>
> ***270A.*** *(1)……..*
>
> **…….**
>
> **…….**
>
> *(9) The cases of misreporting of income referred to in sub-section (8) shall be the following, namely:—*
>
> *(a) misrepresentation or suppression of facts;*
>
> *(b) failure to record investments in the books of account;*
>
> *(c) claim of expenditure not substantiated by any evidence;*
>
> *(d) recording of any false entry in the books of account;*
>
> *(e) failure to record any receipt in books of account having a bearing on total income; and*
>
> *(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply."*

8. Clause (a) to (f) thereon are specific instances of mis-reporting of income which attracts levy of penalty under the said subsection. It is, therefore, to be seen whether in the facts of the present case the assessee's case could be said to fall under any of the sub-clauses mentioned in Section 270A(9) of the Act so as to justify the levy of penalty in terms of the said Section on the assessee.

9. The facts of the case are that the assessee had claimed deduction of capital gains earned u/s.54F of the Act by making investment in a new property and when doing so had claimed

deduction to the extent of the entire investment made on acquiring a new house property amounting to Rs.1,17,92,358/-. As per the AO, the assessee was entitled to deduction / exemption u/s.54 of the Act only on a proportionate basis. The capital gain earned by it being eligible for deduction in proportion to the amount of sale consideration received by it which was invested in acquiring a new asset. Accordingly, the AO worked out the eligible deduction of the assessee to be Rs.91,60,046/- as opposed to the assessee's claim of Rs.1,17,92,358/-.

10. The assessee did not challenge this addition before the Ld. CIT(A).

11. On this disallowance of deduction u/s.54F of the Act to the extent of excess claimed by the assessee, penalty for mis-reporting of income as a consequence of under reporting in terms of Section 270A(9) of the Act has been levied. Clearly the assessee's case clearly does not fall within any of the instances specified in Sub-section (9) of Section 270A as reproduced above. It is neither a case of misrepresentation or suppressions of facts, since, the assessee had fairly disclosed all facts relating to the capital gains earned by it and invested in the acquisition of new asset. The assessee's only fault was in relation to the calculation of claim of deduction. The assessee's case also does not fall within any other clauses of Sub-section (9) of Section 270A of the Act. The orders of the authorities below i.e. both the AO and the CIT(A), also do not specify which particular condition, the assessee fulfilled for

charging him with mis-reporting of income. In the light of the same, penalty levied u/s.270A(9) of the Act is held to be not sustainable in law and is directed to be deleted.

12. In the result, appeal filed by the assessee is allowed.

This Order pronounced on 30/10/2025

Sd/-	Sd/-
(SIDDHARTHA NAUTIYAL)	(ANNAPURNA GUPTA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 30/10/2025
S. K. SINHA