



**INCOME TAX APPELLATE TRIBUNAL,
PUNE BENCH, PUNE**

BENCH: B

BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER

AND

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

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| ITA 790/PUN/2026 निर्धारणवर्ष/Assmt. Year: 2016-17) Permanent Account Number: AAEFS2410C | | |
| SHARAD SHAH & CO 1184/4, GOKUL NAGAR B, FERGUSSON COLLEGE ROAD, SHIVAJINAGAR PUNE, PUNE-411005, MAHARASHTRA | Vs. | ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1), PUNE PMT BUILDING, SHANKAR SETH ROAD, PUNE PUNE-411037, MAHARASHTRA |
| (अपीलार्थीAppellant) | | (प्रत्यर्थीRespondent) |
| निर्धारितीद्वारा/Assessee represented by: | | Shri Sharad A Shah, AR |
| राजस्वद्वारा/Revenue represented by: | | Smt. Shilpa NC, Addl. CIT Sr. DR |
| सुनवाईकीतारीख/Date of conclusion of hearing: | | 16-06-2026 |
| घोषणाकीतारीख/Date of pronouncement: | | 18-06-2026 |

ORDER

PER PAVAN KUMAR GADALE, JUDICIAL MEMBER:

The assessee has filed the appeal against the order of the ADDL/JCIT(A) Delhi passed u/sec 250 of the Income Tax Act. The assessee has raised the grounds of appeal challenging the order of the CIT(A) in not condoning the delay in filing the appeal and sustaining the action of the Assessing Officer.



2. The brief facts of the case are that, the assessee is a partnership firm and the assessee has filed the return of income for the A.Y. 2016-17 on 16.10.2016 disclosing a total income of Rs. 34,10,720/-. Subsequently, the case was selected for scrutiny under the CESS under compulsory category for the following reasons:

(i) change in the method of accounting resulting in decrease in profit (Form 3CD and Part AP&L of ITR).

(ii) Tax credit claimed in ITR is less than tax credit available in 26AS (26AS and Part B-TTI of ITR)(Verification of corresponding receipts/investments).

Accordingly, notice u/sec 142(1) of the Act along with questionnaire was issued. In compliance to the notice, assessee has filed the submissions mentioning that during the year under consideration the assessee has changed method of accounting from Mercantile System to Cash System and as per the Audit Report the decrease sale of Rs. 1,06,36,541/- and also revenue loss to that extent. Whereas the assessee has filed the submission on 16.05.2018 mentioning that the effect on profit due to change in method of accounting is only Rs. 9,85,658/- and the Ld.AO called the assessee to explain the loss of revenue due to change in method of accounting and the assessee has filed a detailed reply on 29.11.2024. Whereas Ld.AO was not satisfied with the explanations and observed that there is overall revenue impact to the extent of Rs. 9.85.658/- and added to the income and assessed the total income of Rs. 43,96,380/- u/sec 143(3) of the Act dated 04.12.2018.

3. Whereas Ld.AO has initiated the penalty proceedings u/sec 271(1)(c) of the Act and in compliance to the notice, the assessee has filed the submissions on the factual aspects and relied on various judicial decisions. But the Ld.AO was not satisfied with the explanations and levied a penalty of Rs. 3,10,000/- vide order passed u/sec 271(1)(c) of the Act dated 28.06.2019.



4. Aggrieved by the penalty order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has issued notice and there was no proper compliance by the assessee and there was delay in filling the appeal and the assessee has not filed the sufficient reasons for the delay. Further, the CIT(A) has not condoned the delay and dismissed the assessee's appeal in limine. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has not considered the facts that the assessee has filled the submissions mentioning that during the year under consideration the assessee has changed method of accounting from Mercantile System to Cash System and referred to the submissions placed at page 15 to 23 of the paper book. The assessee has filed the appeal against the penalty order before the CIT(A) but inadvertently mentioned as assessment order and the delay in filing was neither deliberate nor a wanton Act. Further, the Ld.AR emphasized that the assessee has good case on merits and prayed for an opportunity to substantiate with the material evidences before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie, the CIT(A) has passed the order considering the fact that there is no proper compliance by the assessee in spite of providing adequate opportunity of hearing and the delay in filling the appeal was not explained with the reasonable cause. Whereas the assessee has raised grounds of appeal challenging the levy of penalty by the Assessing Officer and there could be various reasons for no proper compliance. Whereas the assessee has made a request for condonation of delay in



filling the appeal. Therefore, considering the facts, provisions and the condonation of delay request as dealt by the CIT(A) there is a reasonable cause explained and there is no benefit is derived in causing delay in filing appeal before the CIT(A). Whereas the Hon'ble Supreme Court in case of B. Madhuri Goud v. B. Damodar Reddy (2012) 12 SCC 693, has held that the following principles must be kept in mind while considering the application for condonation of delay;

(i) *There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

(ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

(iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

(iv) *No presumption can be attached to deliberate cause of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

(v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

(vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

(vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*



(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such litigation.*

(xi) *It is to be borne in mind that no one gets away with fraud, is representation or interpolation by taking recourse to the technicalities of law of limitation.*

(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”*

7. The Hon'ble supreme court in the case of Collector, Land Acquisition Vs. MST Katiji & others (167 ITR 471) (SC) has observed as under :

“ The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

8. We respectfully follow the observations and ratio of the decisions of Hon'ble Supreme Court and find that the delay



in filing the appeal before the CIT (Appeals) by the assessee is supported with sufficient cause and pragmatic approach should be considered for condonation of delay and accordingly the delay is condoned. Further considering the principles of natural justice, the assessee shall be provided with one more opportunity of hearing to substantiate the case with the revised Form No. 35 along with the evidences. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal. And the grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 18th June, 2026.

Sd/-

MANISH BORAD
(ACCOUNTANT MEMBER)

Pune; दिनांक / Dated: 18th June, 2026.

Abhishek Mohan

Sd/-

PAVAN KUMAR GADALE
(JUDICIAL MEMBER)

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “**B**”बेंच,
पुणे/ DR, ITAT, “**B**” Bench, Pune.
5. गार्डफ़ाइल / Guard File.

//TRUE FILE//

आदेशानुसार / BY ORDER,

Assistant Registrar,
आयकर अपीलीय अधिकरण, / ITAT, Pune