

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.598/Ahd/2025
Assessment Year: 2017-18**

Shri Khambhat Taluka Sarvajanik Kelavani Mandal, Kelavani Mandal Office, B D Rao College Campus, Bethak Road, Khambhat, Anand - 388 620. (Gujarat) [PAN – AAATS 8864 J]	Vs.	Income Tax Officer, Ward – Exemption Vadodara, Aaykar Bahavan, Race Course Circle, Vadodara – 390 007.
(Appellant)		(Respondent)
Assessee by	Shri Jigar Adhyaru, CA	
Revenue by	Shri R.P. Rastogi, CIR-DR	
Date of Hearing		04.06.2025
Date of Pronouncement		17.06.2025

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order of National Faceless Appeal Centre, Delhi (in short ‘the CIT(A)’) dated 22.09.2023 for the Assessment Year (A.Y.) 2017-18.

2. The Registry has informed that there is a delay of 477 days in filing the present appeal. The assessee has filed a condonation application along with an affidavit explaining the reason for the delay. Shri Jigar Adhyaru, Ld. AR of the assessee submitted that the delay in filing the

appeal was due to gross negligence of the accountant. He explained that in the present case the assessment order was passed ex-parte, as no proper compliance was made before the Assessing Officer (in short 'the AO'). Further, due to fault of the accountant, no compliance was made even before the Ld. CIT(A). Thereafter, the matter was referred to the accountant for filing the second appeal but due to the negligence of the accountant, the present appeal was filed with a delay of 482 days. The Ld. AR submitted that the assessee had handed over the matter to the accountant in good faith that the appeal will be filed in time. He submitted that the lapse on the part of the accountant constitutes sufficient cause for condonation of delay. He, therefore, prayed to condone the delay in the present matter.

3. Per contra, Sh. R P Rastogi, the Ld. CIT-DR submitted that the explanation of the assessee for the delay does not constitute sufficient cause to condone the delay. He submitted that when the accountant had been negligent before the AO and also before the Ld. CIT(A), which resulted in ex-parte orders, the assessee should have taken precaution to ensure that the present appeal was filed within time. According to the Ld. CIT(A), the assessee cannot escape by merely passing on the blame for the delay on the accountant.

4. We have considered the rival submissions. Before we adjudicate the issue of delay in filing the appeal, it will be apposite to examine the facts of the case in certain detail. The assessee is a Trust and no return of income for A.Y. 2017-18 was filed. The Assessing Officer had received an information under "Operation Clean Money" that the assessee had deposited cash aggregating to Rs.10,77,455/- in its bank account during the demonetisation period i.e. from 09.11.2016 to 30.12.2016. A notice

under Section 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued by the Assessing Officer on 09.03.2018 requiring the assessee to file its return, to which there was no compliance. In the course of assessment, the AO made enquiry from the banks under Section 133(6) of the Act and it transpired that total cash deposit of Rs.97,92,015/- was made in the different bank accounts of the assessee during the demonetization period. In addition, there were other credit entries by way of cheque/transfer/clearing to the extent of Rs.2,05,97,779/-. As the source of the cash deposits as well as the credit entries was not explained by the assessee, the AO had treated the entire amount of Rs.3,03,89,794/- (97,92,015 + 2,05,97,779/-) as unexplained money of the assessee under Section 69A of the Act. Further, the interest of Rs.89,470/- received during the year was also considered as income of the assessee. The assessment was completed under Section 144 r.w.s 147 of the Act on 23.12.2019 at a total income of Rs.3,04,79,265/-.

5. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority. The Ld. CIT(A) had allowed three opportunities to the assessee but no compliance was made by the assessee other than seeking adjournment on one occasion. Further, as no explanation of the cash deposits/credit entries in the bank account was given before the Ld. CIT(A), the addition as made by the AO was confirmed and the appeal of the assessee was dismissed. Now the assessee has filed the present appeal with considerable delay of 477 days and has taken the following grounds of appeal: -

- "1. On the facts and circumstances of the case and in law, the appellant prays your honour to set aside the case to the assessing officer for fresh assessment.*

2. *The appellant submits that at the time of assessment & appellate proceedings, it could not place submissions, explanation & justification before the assessing officer and the assessment has been framed u/s. 144 of the Act. Having gone through the fact, no prejudice will be caused to the revenue if the matter is set aside to the assessing officer for fresh assessment. The appellant shall make due compliance with the notices issued by the authorities.*
3. *The appellant craves leave to add, alter or amend any of the aforesaid ground or grounds if necessary."*

6. As per the provisions of Section 253(5) of the Act, the Tribunal may admit an appeal after expiry of the prescribed period, if it is satisfied that there was 'sufficient cause' for not presenting the appeal within the prescribed period. The order of the CIT(A) was received by the assessee on 22.09.2023 and the due date for filing the present appeal was 22.11.2023. However, the appeal was filed on 21/03/2025 with a delay of 477 days. The assessee has explained that the delay in filing the present appeal was due to gross negligence of the accountant. The assessee has filed an affidavit of Shri Bankimchandra Ramchandra Vyas, the Secretary of the assessee trust, explaining the reason for delay, which is reproduced below: -



BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD

IN THE CASE OF

SHRI KHAMBHAT TALUKA SARVAJANIK KELAVANI MANDAL

(PAN- AAATS8864J)

**AFFIDAVIT OF DEPONENT FOR LATE FILING THE APPEAL BEFORE THE
HON'BLE ITAT**

Most respectfully, the Deponent submits as under: -

Before the Hon'ble Income Tax Appellate Tribunal

In the matter of Shri Khambhat Taluka Sarvajani Kelavani Mandal for the
Assessment Year 2017-18

1. The Deponent Shri Khambhat Taluka Sarvajani Kelavani Mandal and hence is fully conversant of the facts deposed below:
2. That the deponent received CIT(A)'s order on 22.09.2023.
3. That appeal was to be filed by 22.11.2023.
4. Due to gross negligence of an accountant, an ex-parte assessment order has been passed by assessing officer as well as Commissioner of Income Tax (Appeals).
7. That in this way there is a delay of 482 days which is due to gross negligent of an accountant



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8. That delay in filing the appeal is because of the gross negligent of an accountant.

VERIFICATION

I, Shri Bankimchandra Ramchandra Vyas, the Secretary, deponent do hereby verify that the contents of this memorandum of appeal from paras 1 to 8 are true to the best of my knowledge and belief.

Dated- 18.03.2025

Place- Khambhat

For Shri Khambhat Taluka Sarvajani Kelavani Mandal
(Appellant)

Shri Bankimchandra Ramchandra Vyas

(Secretary)

IDENTIFIED BY ME

સુજેશ રામ બાલમુકુન્દ કાવિ
ADVOCATE / PERSON
બી.ટી. ટા. કામ્બહાટ જિલ્લો
વિનમ્ર. સહયુગ

**Solemnly Affirmed
BEFORE ME**

P. M. MIRZA
NOTARY
GOVT. OF INDIA

PARVEZHUSAIN M. MIRZA
ADVOCATE & NOTARY
(GOVT. OF INDIA)
Resi. Lal Mahel, B/h. Court of Khambhat,
At. & Ta. Khambhat, Dist. Anand, (Guj.)-388620
Mo.: 9879944815



7. The assessee has also filed an affidavit of the accountant Shri Rajesh Balmukund Kavi, which also is reproduced below:

8. In the present case, the assessee has explained the “reasonable cause” for the delay in filing the appeal as solely due to the lapse/negligence on the part of the accountant. It is acknowledged by the assessee that due to gross negligence of the accountant, ex-parte assessment order was passed by the AO and the first appeal was also dismissed by the Ld. CIT(A) due to non-compliance before him. If the accountant of the assessee was so negligent that it resulted in ex-parte orders by the lower authorities, the assessee should have been cautious and diligent to ensure that the present appeal was filed within time. The assessee had merely passed on the blame for delay of 477 days in filing the present appeal on the negligence of the accountant. But the fact remains that the assessee was equally responsible for the negligence in not filing its return of income and for the non-compliance to the notices before the AO as well as before the Ld. CIT(A).

9. It is a settled position of law that the delay occurred in filing the appeal should be considered liberally. At the same time, it is also settled law that there is no general proposition that mistake of the counsel by itself is always sufficient ground for condonation of delay. Every case is required to be considered on the basis of facts and circumstances of the case. In the present case, the negligence of the accountant had resulted in ex-parte decision of the two lower authorities. The assessee was well aware of the fact that ex-parte orders were passed by the AO and by the CIT(A) due to negligence of the accountant. Under the circumstances, the assessee should have been vigilant to pursue the matter with the accountant and to ensure that the present appeal was filed within time. The assessee cannot escape by merely passing on the blame for delay in filing the appeal to the accountant. The attitude of the assessee was of

gross negligence as it neither filed its return of income nor complied and watched the affairs of its proceedings at any stage. The explanation of the assessee for delay in filing the present appeal is, therefore, not found to be bona-fide. In the affidavit of Shri Rajesh Balmukund Kavi, the accountant, it is stated that he was handling the appeal matter before the Commissioner (Appeal) and due to lapse on his part the Commissioner (Appeal) had dismissed the appeal. He had thus only owned the responsibility for non-compliance before the CIT(A) which had resulted in dismissal of the appeal. The accountant has nowhere admitted his lapse for delay in filing the present appeal before the Tribunal.

10. In the decision of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur, [2013] 5 CTC 547***, the Supreme Court while dealing with the issue on the delay in filing the appeal, laid down the guidelines and held as under:

15. From the aforesaid authorities the principles that can broadly be culled out are:

- (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 causation 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 encapsule 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 a litigation.*
- (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation 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.*

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- (a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- (d) *The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

11. In the present case, we find that the assessee has been lackadaisical in its approach and it has tried to seek condonation of delay in a nonchalant manner. The gross negligence on the part of the assessee

and the lack of bona fides does not make it a fit case for condonation of delay. As held by the Hon'ble Apex Court the liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. We can't condone the delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. The conduct, behaviour and attitude of the assessee relating to its inaction or negligence are relevant factors to be taken into consideration. The gross negligence of the assessee in not filing its return of income and in not complying to the notices at any stage reflects poorly on the conduct, behaviour and attitude of the assessee. Further, there are inconsistencies in the declarations as made by the assessee and the accountant regarding the delay in filing the present appeal. There was no careful concern in drafting the condonation application by the assessee considering the affidavit of the accountant. The Supreme Court in the decision, referred supra, has deprecated such practice of showing leniency in condoning the delay. The parameters laid down by the Supreme Court, when not to condone delay, get squarely attracted to the facts of the present case and we find no reason to condone the delay.

12. In the case of ***Mani Ram Seva Nyasi Sangh Ayodhya vs. CIT, 119 taxmann.com 383 (SC)***, the Hon'ble Supreme Court has held that it was otherwise the duty of the assessee to watch the affairs of its firm and delay of few days or months can be considered, but delay of years is required to be examined minutely. As already discussed earlier, there was gross negligence on the part of the assessee and it didn't exercise any care to enquire about the status of the second appeal and merely tried to shift the responsibility on his accountant. On the other hand, the accountant has only owned up the responsibility for the ex-parte order of

the CIT(A) and has not acknowledged any delay on his part for filing the present appeal. Since the assessee has failed to properly explain the reason for delay in filing the present appeal, we don't find any ground to condone the delay and consequently, the appeal of the assessee is dismissed as time barred.

13. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 17 th June, 2025.

Sd/-
(SANJAY GARG)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 17th June, 2025

*PBN/**

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

TRUE COPY

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad