

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA No. 5380/Mum/2025  
(Assessment Year: 2018-19)**

Attivo Protezione Pvt Ltd 108, 1 <sup>st</sup> Floor Ashar Enclave Kolshet Road, Thane – 400 607.	Vs.	ITO, Ward – 22(1)(1) Room No. 319, Piramal Chambers, Mumbai
PAN/GIR No. <b>AALCA4330M</b>		
(Applicant)		(Respondent)

Assessee by	None
Revenue by	Shri Rajesh Sakhardane, Sr. DR

Date of Hearing	27.10.2025
Date of Pronouncement	31.10.2025

आदेश / ORDER

**PER SANDEEP GOSAIN, JM:**

The present appeal has been filed by the assessee challenging the impugned order dt. 29.09.2021 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2018-19.

2. None appeared on behalf of the assessee either physically or virtually when the case was called repeatedly, however an application for seeking adjournment is on the court file. After having gone through the contents of the

said application I find no reasons for further adjournment as the assessee was required to file affidavit along with the application for seeking condonation of delay of 1370 days in filing the appeal, the said affidavit was required to be filed but the same was not filed on 29.08.2025 when the appeal was filed. Thus for this purpose alone no further adjournment can be granted. Even otherwise adjournment is not a right of the party but is discretion of the court therefore application for seeking adjournment stands rejected.

3. Ld. DR present in the court is ready with the arguments, therefore I decided to proceed with the hearing of the appeal ex-parte.

4. Since there is a delay in filing the present appeal of 1370 days and in this regard assessee has only mentioned that after the decision of the appeal by Ld. CIT(A), the Tax consultant of the assessee had not advised any remedial action against the said order passed u/s 250 of the Act, therefore appeal was not filed.

5. To my mind this cannot be a reason for condoning the delay of 1370 days. After having examine the issue in the light of the facts and the circumstances of the case and also in view of the terms of **section 5 of the Limitation Act**, whereby discretion is vested in the Court/Appellate Authority to admit an appeal or an application, after the expiry of the prescribed period of limitation, if the

appellant shows '**sufficient cause**' for not preferring the application within the prescribed time. The expression 'sufficient cause' commonly appears in the provisions of order 22 Rule 9 (2), [CPC](#) and [Section 5](#) of the Limitation Act. The Court while allowing such application has to draw a distinction between **delay** and **inordinate delay** for want of **bona fides of an inaction or negligence** which would deprive a party of the protection of [Section 5](#). "Sufficient cause" is a condition precedent for exercise of discretion by the Court for condoning the delay. Courts have time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. The law of Limitation is enshrined in the legal maxim "*Interest Reipublicae Ut Sit Finis Litium*" (It is for the general welfare that a period be put to litigation).

6 To understand the scope of the term "sufficient cause" in matters of **delay**, reliance is placed on the decision of Hon'ble Supreme Court in the case of **Basawaraj and Ors vs The Special Land Acquisition Officer, AIR 2014 SC 746** wherein the Hon'ble Supreme Court held that the **sufficient cause does not include the negligent manner in which the applicant had acted or/ and there was a want of bona fide, on his/her part. If a party does not act diligently or remains inactive**, it cannot qualify as

sufficient ground allowing the court to exercise discretion in favour of such a party. Condonation of delay is not an automatic right but requires the person requesting it to provide a valid explanation for **each day of delay** and demonstrate a reasonable cause. “Sufficient Cause” cannot be liberally interpreted, if **negligence, inaction or lack of bona fides is attributed to the party**. In the case of *Anshul Agarwal vs New Okhla Industrial Development Authority (2011) 14 SCC 578*, the hon’ble Apex Court held that the reason provided for the **delay must be something beyond the individual's control that prevented them from approaching the Court**.

7 It is well established in law that the period of limitation has to be construed somewhat strictly as it has the effect of vesting for one and taking away right from the other. To condone the delay in a mechanical or a routine manner may amount to jeopardizing the legislative intent behind [Section 5](#) of the Act. Where the parties chose to sleep over their rights for prolonged periods without any just cause, can hardly claim equity in justice particularly faced with the statutory provisions of [Section 5](#). In construing enactments which provide period of limitation for institution of proceedings, the purpose is to intimate people that after lapse of certain time from a certain event,

a proceeding will not be entertained where a strict grammatical construction is normally the safe guide.

8 The hon'ble Apex Court in the case of **N. Balakrishnan V. M. Krishnamurthy, AIR 1998 SC 3222 held as under:-**

*"11. Rules of limitation are meant to see that parties do not resort dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for laundering the remedy may lead to unending uncertainty and consequential anarchy. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

9. In the case of **State of West Bengal vs. Administrator, Howrah Municipality, AIR 1972 SC 749,** the Hon'ble Supreme Court held that:-

*.....parties must act bonafidely, expeditiously and with due care. A casual or a negligent litigant who has acted with utter irresponsible attitude, cannot claim the condonation of delay in law when the right has accrued to the other side. The expression "sufficient cause" will always have relevancy to reasonableness. The actions which can be condoned by the Court should fall within the realm of normal human conduct or normal conduct of a litigant. It is neither expected nor can it be a normal conduct of a public servant or a litigant that they would keep the files unmoved, unprocessed for months together on their tables.*

10. The Hon'ble Delhi High Court in its decision in the case **Surinder Kumar Boveja Vs. CWT 287 ITR 52** has categorically held that delays cannot be routinely excused. In this decision, the Hon'ble High Court has further held as under:

*"Where the delay is prolonged and the assessee is not able to show that the delay had occurred in spite of exercise of due attention and diligence, the assessee cannot complain, if the delay is not condoned."*

11. In the decision rendered in the case **of Rankak and Ors. v Rewa Coalfields Ltd. reported at AIR 1962 SC 361**, the hon'ble Apex Court has held that the party has to show reason for delay on the last day of the limitation period and for each day thereafter. It was further held that **condonation is not a matter of right and that the Courts have to exercise discretionary jurisdiction.**

12 The issue of condonation of delay had come up before **Hon'ble Orissa High Court in the case of Brijbandhu Nanda (44 ITR 688)**. The delay was not condoned by the Tribunal and on further appeal, the Hon'ble High Court had held that there is no justification for the delay as under:

*"Even assuming that the questions referred are questions of law, I am of opinion that there was no error on the part of the Tribunal in not condoning the delay in Its discretion. In fact, as appears from the assessee's own petition for condonation of delay in I.T.A. Nos. 85, 86 and 87 of 1954-55 dated May 5,*

*1955, the assessee does not appear to have explained why he waited for 56 days after he received the order on February 5, 1954, as aforesaid. It further appears from a letter dated April 9, 1954, from the Assistant Registrar of the Appellate Tribunal, Bombay, that the appeals were received by him on April 7, 1954, that is to say, one day beyond the period of limitation. In view of sub-rule (2) of rule 7, which provides that a memorandum of appeal, sent by post, shall be deemed to have been presented to the Registrar or to the officer authorised by the Registrar, on the day on which it is received in the office of the Tribunal at Bombay, it is clear that the appeals were received by the Registrar out of time. We have discussed the general mandatory aspect of the provisions of the Act and the rules thereunder in our decision in [Govinda Chowdhury V. Commissioner of Income-tax referred to above](#).....**Thus, even the delay of one day was not condoned by the Hon'ble Orissa High Court.***

13 Moreover, in cases where the assessee has not come up clean and the reasons given are not based on facts, the delay cannot be condoned merely because of sympathy. It was so decided in the case of **Mewa Ram (Deceased by L. Rs) & Ors. v. State of Haryana, AIR 1987 SC 45**. The Hon'ble Supreme Court have time and again held that when mandatory provision is not complied with and that delay is not properly satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone. In the case of **Jagdish Lal and Others V.s State of Haryana (1996) 6 SCC 267** wherein it was observed by the Hon'ble court that the appellant kept on sleeping for the period and suddenly decided to file the appeal. Again **Hon'ble High Court of Rajasthan & Others, in the case of M/s. Binami Cement**

**Limited Vs. State of Rajasthan & Others, (S.B. (sales Tax) Revision Petition No.556/2011)** decided that delay in filing the appeal cannot be condoned for the reason that appellant failed to explain the specifically the delay for the particular period. It has been held that the courts, including the Supreme Court, no doubt have recommended liberal approach in considering applications for condonation of delay, yet the concepts such as liberal approach, justice oriented approach and substantial justice cannot be employed to jettison the substantial law of limitation especially when on facts the authority before which application under section 5 of [Limitation Act](#) is filed, finds no justification for the delay.

14 It has been held by the Courts that while considering the application under [section 5](#) of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers and the discretion has to be exercised within reasonable bounds. It has been further held that the discretion under [section 5](#) of the Limitation Act has to be systematically exercised duly informed by reasons and that whims or fancies, prejudices or predilections cannot and should not form the basis of exercising the discretionary powers to condone delay. In the case of ***Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation [(2010) 5 SCC 4591, the Hon'ble Supreme Court*** has held that even



while a liberal approach is desirable in condoning the delay of short duration, stricter approach is required to be applied in cases of **inordinate delay**.

15. Thus, it is a settled law that the **assessee must show that he was diligent in taking proper steps and the delay was caused notwithstanding his due diligence. It is for him to explain the reason for the delay and it is not the function of authorities to find the cause for delay. The Appellate Authority has to examine whether the sufficient cause has been shown by the appellant for condoning the delay and whether such cause is acceptable or not. Even though substantial justice should not be defeated by technicalities but that does not mean that any plea without any possible or acceptable basis and even without hearing, resemblance or rationality has to be accepted and delay has to be accepted and condoned which shall be against the very spirit of law. The time prescribed for filing the appeal will become meaningless in such an event.**

16. Perusal of the facts shows that the **assessee in the present case appears to be negligent and has not taken appropriate steps to peruse the remedy till 1370 days and thus did not take necessary action in filing the appeal within the prescribed time.** Our aforesaid view is

that in absence of a sufficient/reasonable cause leading to the delay in filing of an appeal, the same does not merit to be condoned.

17 Further from the facts emanating from the case, it is coming out clearly that the overall approach of the assessee, throughout has been of prolonging, stretching the matter just to keep the appeal proceedings pending. Thus, on these given facts, I am of the considered view that the delay in filing of the appeal cannot be condoned in absence of any justifiable reason. Though it is well accepted that no appellant derives any benefit by filing a delayed appeal, however the same should not be used as a tool, or an excuse to avoid and prolong and thus delay further consequent proceedings from the Department. Accordingly, in this case, the assessee has not been able to explain the reason for delay for the entire period and has merely taken a general plea based on general reasons.

18. The delay is undoubtedly substantial although the assessee has claimed that it was on account of wrong advise of his Tax consultant who did not advise any remedial action against the said order. As a result, the assessee who was banking upon the Tax consultant remained unaware of filing of appeal. Though we do not find any reasons to conclude that the delay was malafide, the fact remains that the assessee being an Private Limited

Company should have been more conscious of his statutory obligations knowing fully well the implication thereof. It is further noticed from the assessment order and also Ld. CIT(A) order that the assessee attended the proceeding. Therefore, certain element of negligence is palpable on his part and putting all the blame on the tax consultant would not absolve him of his own responsibility in this regard. In the case under consideration, it is nowhere evident that whether the assessee made any effort or attempt to contact after passing of impugned order appeal order passed by the ld.CIT(A) and which circumstances prompted the assessee to file the appeal after 1370 days delay.

19. Thus there was no 'sufficient cause' for this unreasonable admitted delay of 1370 days in filing the appeal before the Bench which cannot be condoned. **Accordingly, the condonation application being bereft of any 'sufficient cause' is hereby rejected.**

20. In the result ,the **appeal is dismissed on account of delay**. Since the appeal stands dismissed there is need to adjudicate on the merits therein.

Order pronounced in the open court on 31.10.2025

**Sd/-**  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 31/10/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai

**SAG** | blog