



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 43 of 2025(O&M)
Date of Decision: 01.10.2025.**

Tirath Kaur Gill

.....Appellant

Versus

Income Tax Officer, Ward Dasuya and others

..... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Alok Mittal, Advocate
for appellant.

LISA GILL, J.

1. Challenge in this appeal filed under Section 260A of Income Tax Act, 1961 (for short Act 1961) is for setting aside order dated 18.02.2020 passed by learned Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short 'learned ITAT, Amritsar') confirming addition of Rs.54,79,710/-, while upholding order dated 24.11.2017 passed by Commissioner of Income-Tax (Appeals) (for short 'CIT (A)) and Assessment Order dated 13.10.2016 passed by Income Tax Officer, Dasuya (ITO, Dasuya).

2. It is submitted that appellant is a Non-Resident Indian (NRI) residing at Canada for the last over 30 years. Appellant was the 5th child of her parents and was statedly given in adoption after her birth on 02.01.1969

to Smt. Naseeb Kaur i.e., her real maternal aunt (Massi). Appellant was married in 1991 when she migrated to Canada. Appellant's adoptive mother i.e., Naseeb Kaur was looked after by her brother Ujaggar Singh. After the death of Ujaggar Singh, Joginder Kaur i.e., his wife migrated to Canada along with her children. Appellant along with Joginder Kaur visited India in December 2008 when Naseeb Kaur was critically ill. Naseeb Kaur executed three transfer deeds, one transferring her residential house on 01 K 09 M of land in favour of appellant, second deed transferring 04 K of land in favour of Gurudwara Sahib of village Chandi Dass and third deed transferring 111K 08 M of land equally in favour of present appellant and Joginder Kaur. Though no consideration was passed amongst parties but consideration amount was nevertheless mentioned in the deed which was registered. Naseeb Kaur passed away on 11.01.2009. After performing her last rites, appellant and Joginder Kaur returned to Canada.

3. Notice dated 21.03.2016 under Section 148 of Act 1961, was issued by Assessing Officer, ITO Dasuya through registered post at village Phandher, Tehsil Dasuya, Hoshiarpur. Appellant telephonically instructed a local counsel to seek time. Reply dated 26.09.2016 was filed, however an *ex-parte* assessment order dated 13.10.2016 was passed by Assessing Officer, assessing undisclosed income at Rs.54,79,710/- for alleged investment made in purchase of half share in 111K 08 M land transferred by Naseeb Kaur.

4. Appeal was filed challenging assessment order dated 13.10.2016. CIT (A) vide order dated 24.11.2016 dismissed the appeal while holding that service of notice was proper and also declined appellant's claim that being an adopted daughter, no consideration was paid.

5. In the interregnum, vide order dated 12.04.2017, penalty at the rate of 100% of the tax sought to be evaded was imposed by the ITA, Dasuya. Aggrieved therefrom, appellant filed an appeal challenging order dated 24.11.2017 passed by CITA(A) (ITA No. 44/ASR/2018). This appeal was dismissed by learned ITAT, Amritsar vide impugned order dated 18.02.2020.

6. Present appeal has been filed challenging order dated 18.02.2020 passed by learned ITAT, Amritsar and 13.10.2016 passed by ITO, Dasuya. There is a delay of 1014 days in filing of this appeal.

7. Learned counsel for appellant vehemently argued that this delay has occurred for reasons totally beyond the control of appellant. It was submitted that after passing of order dated 18.02.2020, appellant had contacted an Advocate for the purpose of filing the appeal. Same was filed by Diary No. 6517902, but some objections were raised on 04.4.2022. It was again refiled, but certain objections were still raised by Registry of this Court on 27.06.2022. These objections were not cleared and are still pending. Appellant, however, could not travel to India and when she came to India in the year 2025 and inquired about the matter, it came to light that appeal had not been registered. She contacted the counsel entrusted with responsibility of filing of appeal, but the original appeal so filed could not be traced, therefore appellant was constrained to file the present appeal, on 19.03.2025. It was argued that appellant was never informed of the progress in the matter and that she should not be put to prejudice due to fault of the counsel. Delay in filing the appeal is absolutely unintentional and not willful besides being beyond the control of appellant. It was thus prayed that delay in filing of this appeal be condoned and the matter be heard on merits.

8. We heard learned counsel for appellant at length and have perused the file.

9. It is matter of record that impugned order was passed on 18.02.2020. It is the case of the appellant that appeal was filed vide Diary No. 6517902. Objections for the first time were raised on 04.04.2022 and thereafter again on 27.06.2022. Original appeal so filed, it was pleaded was not traceable. It is apparent that appellant did not take any steps for pursuing the matter in accordance with law. In terms of decision of Hon'ble the Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, it is the period from 15.03.2020 till 28.02.2022 which has to be excluded on account of outbreak of pandemic, COVID-19. It is crystal clear that appellant even thereafter in the year 2022 took no steps for pursuing the matter. Shifting of the blame only upon the counsel at this stage and that too without any complaint being filed, does not provide sufficient ground for condonation of delay in the given factual matrix. There is no material on record or even pointed out during course of hearing that appellant took any steps to make inquiries about her appeal during the interregnum. In case, appellant had taken necessary steps to find out the status of her appeal, such delay would not have occurred. It is only in March 2025 that necessary steps to file this appeal were taken by her. Hon'ble the Supreme Court in **Pathapati Subba Reddy (Died) by LRs and others Vs. The Special Duty Collector (LA), 2024(3) RCR (Civil) 135** has reiterated that delay in availing the remedy available to the litigant cannot be condoned at the asking. It is further held therein that it is incumbent upon the applicant to explain the delay from the date of passing of the order till the belated filing of proceedings. Relevant portion of the said judgment reads as under:-

“17. It must always be borne in mind that while construing ‘sufficient cause’ in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

18. This Court as far back in 1962 in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd³ has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. The court, despite establishment of a ‘sufficient cause’ for various reasons, may refuse to condone the delay depending upon the bona fides of the party.”

10. Upon considering its various earlier judgments, Hon’ble the Supreme Court further held as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same

cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

11. Hon’ble the Supreme Court in **Thirunagalingam Vs. Lingeswaran and another, 2025(3) RCR (Civil) 212**, held as under:-

“32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

12. In the given facts and circumstances, we do not find the existence of any ground, leave alone a reasonable ground which calls for condonation of delay of 1014 days in filing of the appeal. Application seeking condonation of delay is accordingly dismissed. Appeal is also thus

dismissed being barred by limitation. Pending application(s), if any, stand(s),
disposed of accordingly.

**(LISA GILL)
JUDGE**

October 01 2025.

s.khan

**(MEENAKSHI I. MEHTA)
JUDGE**

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No