IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L) NO. 20375 OF 2026

Uttar Bhartiya Education Society, AY-2018-19
1, 1 Sharda Estate
L.T. Road, Vazira Naka, Borivali (West)
Mumbai - 400 091 ... Appellant

Versus

1. Principal Commissioner of Income Tax (Exemption)
   Cumballa Hill, Peddar Road,
   Mumbai - 400 026

2. Deputy Commissioner of Income Tax
   Centralized Processing
   Centre, Income Tax Department,
   Bengaluru

3. Income 'Tax Officer,
   Exemption Ward 2(4), Cumballa Hill
   Peddar Road, Mumbai - 400 026 ... Respondents

WITH
INCOME TAX APPEAL (L) NO. 20379 OF 2026

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Peddar Road, Mumbai - 400 026 ... Respondents

Mr. Pankaj Toprani a/w. Mrs. Krupa Jinit Shah, for Appellant.

Mr. Prathmesh Bhosle, for Respondent.

**CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.**

DATE: 3 JULY 2026

ORAL JUDGMENT (Per : AARTI SATHE, J)

1. These are two appeals filed by the Appellant-Assessee for assessment years (A.Y.s) 2018-2019 and 2019-2020 involving common questions of law and facts, and hence they are being disposed of by this common judgment.

2. These appeals are filed by the Appellant-Assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as '**the Act'**) challenging the order dated 30th January 2026 (hereinafter referred to as "**the impugned order**") passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the '**ITAT**") for the aforesaid assessment years rejecting/dismissing the Appellant-Assessee's appeals, filed against the order of the Commissioner of Income Tax, (Appeals) (for short '**CIT-A'**) dated 24th September 2025. The ITAT by its order dated 30th January 2026 upheld the order of the CIT-A on the ground that the Appellant-Assessee had filed the appeals belatedly before the CIT-A.

3. By the present appeals the Appellant-Assessee has raised the following questions of law: -

> (a). Whether on the facts and circumstances of the case and in law, was the Hon'ble Tribunal justified in dismissing the appeal of the Appellant in limine on the ground that such inordinate delay of 1797 days (987 days considering extension of limitation on account of Covid Pandemic) in filing an appeal before the CIT (A), NFAC cannot be condoned in absence of any sufficient cause shown by the Appellant by outrightly rejecting the affidavit of the Trustee of the Appellant filed during the course of hearing?
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> (b) Whether on the facts and circumstances of the case and in law, was the Hon'ble Tribunal justified in dismissing the appeal of the Appellant in limine, overlooking the fact that in the matters involving Charitable institutions like the Appellant where there is genuinely no intention to make profit and where the activities are carried on "Non-Profit" basis, the delay is seldom deliberate?
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> (c). Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal has exercised the discretion vested in it reasonably and in accordance with the settled principles enabling condonation of delay in filing of statutory appeals?

4. Briefly the facts for A.Y. 2018-19 which is the lead year are as follows : -

i. The Appellant-Assessee is public charitable trust registered under the Maharashtra Public Trusts Act, 1950 and also as a society under the Societies Registration Act, 1860. The Appellant-Assessee is also registered under Section 12A of the Act and is regularly assessed under that status for the past several years. It is the Appellant-Assessee’s contention that the Appellant-Assessee is entitled to claim exemption under section 10(23C) (iiiab) of the Act for which no registration is required under this Act. The Appellant-Assessee conducts Government aided Primary and Secondary Schools and Junior college in one Sharda Estate, L.T. Road, Wazira Naka, Borivali (West) and is involved in imparting education to students particularly in lower income groups. The Appellant-Assessee is also registered with State Government and conducts Government aided Primary and Secondary

Schools and Junior colleges and in respect thereof a certificate dated 28th August 2018 has been issued by Education Inspector, Brihanmumbai (Western Division) evidencing that the Appellant-Assessee is 100% Government aided educational institution, in Marathi with its English translation.

ii. The Appellant-Assessee has been availing and being granted exemption under section 10(23C)(iiiab) read with Rule 2(BB) of the Income Tax Rules 1962 (for short "**the Rules**"). For the present A.Y., the Appellant-Assessee filed its return of income (for short **"ITR"**) on 31st August 2018, declaring the total income as 'Nil'. The said ITR was processed by Respondent No.2 under Section 143(1) of the Income-tax Act, 1961, and the total income of the Appellant-Assessee was assessed at Rs.1,88,15,751/- as against the declared income of 'Nil', resulting in a tax demand of Rs.82,19,923/-.

iii. According to the Appellant-Assessee, it was entitled to exemption under Section 10(23C)(iiiab) of the Act. However, on account of an inadvertent omission on the part of its Chartered Accountant (CA), the prescribed Form No.10B, which was required to be furnished for claiming the said exemption, was not filed along with the ITR. Consequently, in the assessment order passed under Section 143(1) of the Act, the benefit of the said exemption was not granted to the Appellant-Assessee.

iv. The Appellant-Assessee intended to challenge the order passed under Section 143(1) of the Act by filing an appeal before the Additional/Joint Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (for short, "**CIT(A), NFAC**"). However, the appeal could not be filed within the prescribed period of limitation. The limitation for filing the appeal expired on 26th October 2019, as the order under Section 143(1) of the Act was passed on 26th September 2019. The appeal ultimately came to be filed only on 24th September 2024, resulting in a delay of 1,797 days.

v. It is the case of the Appellant-Assessee that, in view of the extension of the period of limitation granted by the Supreme Court during the COVID-19 Pandemic by its order dated 10th January 2022 passed in Miscellaneous Application Nos. 21, 29 and 665 of 2021 in Suo Motu Writ Petition (Civil) No.3 of 2020, the actual delay liable to be considered was only 987 days and not 1,797 days.

vi. By an order dated 24th September 2025, the CIT(A), NFAC dismissed the appeal preferred by the Appellant-Assessee on the ground that there was a delay of 1,797 days in filing the appeal and that the explanation furnished by the Appellant-Assessee for such delay did not constitute "sufficient cause" for condonation. Accordingly, the appeal came to be dismissed as barred by limitation.

vii. Aggrieved by the said order dated 24th August 2025 of the CIT(A), NFAC, the Appellant-Assessee preferred an appeal before the ITAT. The principal contention urged before the ITAT was that the CIT(A), NFAC, had erred in refusing to condone the delay, despite the Appellant-Assessee having furnished a bonafide and reasonable explanation. It was also contended that the principles of natural justice had been violated inasmuch as the Appellant-Assessee was not afforded an adequate opportunity to present its case and to place on record additional material to substantiate its claim for exemption under Section 10(23C) (iiiab) of the Act.

viii. During the pendency of the appeal before the ITAT, the Appellant-Assessee filed an affidavit dated 20th January 2026 sworn by Mr. Jayprakash P. Mishra, Trustee of the Appellant-Assessee. In the said affidavit, it was stated that the denial of exemption under Section 10(23C)(iiiab) of the Act was solely attributable to an inadvertent error committed by the Appellant-Assessee's CA. It was explained that, while filing the ITR for the relevant AYs, the return was inadvertently filed by claiming exemption under Section 11 of the Act instead of Section 10(23C)(iiiab), and the requisite certificate and Form No.10B were consequently not furnished. According to the Appellant-Assessee, the omission was purely inadvertent and occurred due to a bonafide mistake on the part of the CA, resulting in the denial of the exemption to which the Appellant-Assessee was otherwise entitled. The affidavit also set out the circumstances explaining the delay in preferring the appeals before the CIT(A), NFAC and reiterated that the delay was neither deliberate nor intentional but had occurred on account of bonafide reasons beyond the control of the Appellant-Assessee.

ix. By the impugned order dated 30th January 2026, the ITAT dismissed the appeals preferred by the Appellant-Assessee. The ITAT held that there was an inordinate delay of 1,797 days in filing the appeals before the CIT(A) NFAC and that the Appellant-Assessee had failed to establish any valid justification or sufficient cause warranting condonation of the said delay. The relevant observations of the ITAT contained in paragraph 7 onwards of the impugned order are reproduced hereinbelow:

7. We have heard both parties on this preliminary issue of condonation of delay. We have also deliberated on the decisions relied on by the Id. AR. There was a delay of 1797 days in filing appeal before the CIT(A). The Ld. AR submitted that the appellant did not receive the intimation u/s 143(1) of the Act by post at its address. The tax consultant also did not provide him proper guidance regarding filing of appeal before CIT(A). It was also submitted that there was COVID-19 pandemic due to which the Government of India and Hon'ble Supreme Court had extended the limitation period for filing of appeals. After excluding such period, there would be delay of 987 days. The Ld. AR has relied on the decision in case of Collector, Land Acquisition vs. Mst. Katiji (Supra) and Rotary Club of India (supra). Ongoing through the facts of the case and the material on record, we find that there is inordinate delay of 1797 days in filing appeal by the assessee before the ITAT. The time limit for filing appeal with CIT(A) expired on 25.10.2019 which was much before the COVID period which started from March 2020. The appellant has not been able to give any reason for not filing the appeal before the onset of COVID-19. Even if the assessee's contention is accepted, still there was delay of 987 days in filing the appeal before the CIT(A). The trustee himself has admitted that filing of appeal with CIT(A) had slipped out of his mind after resumption of the office of the appellant after COVID-19. He has also not given any affidavit or supporting evidence that the CA did not advise him in taxation matter. It is clear from the facts discussed above that the assessee has not been able to give any cogent reason for such inordinate delay in filing appeal before ITAT. That the delay was purely due to the lack of advice from erstwhile CA, non-receipt of the intimation u/s 143(1) of the Act, slip of mind to file appeal after COVID-19 etc. could not be treated as a "sufficient cause" in terms of provisions of section 253(5) of the Act for the inordinate delay of 1797 days. The Ld. AR has relied upon the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (supra), which was pronounced on 19.02.1987. There was delay only 4 days in the said case. However, we find that in the subsequent decisions, namely, (i) P. K. Ramachandran vs State of Kerala & Anr. (1997) 7 SCC 556, (i) Pundik Jalam Patil vs. Executive Engineers, Jalgaon Medium Project, (2008) 17 SCC 448 and (iii) Basawaraj and Anr vs. Special Land Acquisition Officer, (2013) 14 SCC 81, (iv) Pathapati Subba Reddy (dies) By L. Rs. & Ors. Vs The Special Deputy Collector (LA), SLP(C) No.31248 of 2018 (SC), dated 08.04.2024, it has been held by the Hon'ble Court that condonation of delay should not be granted only on the ground that ordinarily a litigant does not stand to benefit by lodging an appeal late.

8. The Hon'ble Supreme Court in the case of Basawaraj (supra) summarized the law on the subject issue by stating that where a case has been presented in the Court beyond limitation of time, the applicant has to explain as to what was the "sufficient cause" which means an adequate and enough reason, which prevented him to approach the Court within the limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.

9. We also find that in a subsequent decision pronounced on 28.04.2024, in the case of Pathapati Subba Reddy (dies) & Ors. vs. The Special Deputy Collector (LA), in SLP (Civil) No. 31248 of 2018 (SC), the Hon'ble Supreme Court referred to and discussed various decisions of Hon'ble Supreme Court namely (i) Bhag Mal (Alias) Ram Bux & Ors vs. Munshi (Dead) by LRs & Ors (2007) 11 SCC 285 (SC), (ii) Collector, Land Acquisition vs. Mst. Katiji (supra) iii) Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd. (1962) 2 SCR 762, (iv) Maqbul Ahmad and Ors vs. Onkar Pratap Narain Singh and Ors, AIR 1935 PC 85 (v) Brijesh Kumar and Ors vs. State

of Haryana and Ors. 2014 (4) SCALE 50 (vi) Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors, (2011) 4 SCC 363 (vii) State of Jharkhand & Ors vs. Ashok Kumar Chokhani & Ors. AIR 2009 SC 1927 (viii) Basawaraj and Anr. (supra) and held as under:

"7. The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals."

10. It has also discussed the case of Collector, Land Acquisition vs. Mst. Katiji (supra) relied upon by the appellant, and held that the phrases "liberal approach", "justice-oriented approach" and "cause of advancement of substantial justice" cannot be employed to defeat the law of limitation. For ready reference of equality, the same is reproduced hereunder:

"16 . ..... In Collector, Land Acquisition, Anantnag and Ors. vs. Katiji and Ors.2, this Court in advocating the liberal approach in condoning the delay for 'sufficient cause' held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases liberal approach', 'justice- (1987) 2 SCC 107 = AIR 1987 SC 1353 oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

11. After discussion on various cases in its order, the Hon'ble Supreme Court at Para 26, has summed up the law laid down by it 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."

12. The Hon'ble Supreme Court accordingly refused to interfere with the decision of the Hon'ble High Court refusing to condone the delay in filing the appeal.

13. We also find that the Hon'ble Supreme Court in case of H. Guruswamy & Ors. vs. A. Krishnaiah Since Deceased by LRS., in Civil Appeal No. 317 of 2025, dated 08.01.2025, has set aside the order of Hon'ble High Court of Karnataka in WP No.7220 of 2014 wherein the Hon'ble High Court allowed the Writ Petition by condoning the delay of about 6 years. The Hon'ble Supreme Court at para 13 observed as under:

13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation."

14. In view of the above facts and respectfully following the authoritative precedents cited supra, we find no reason to condone the inordinate delay of 1797 days in filing appeal before the CIT(A) in absence of any sufficient cause. The CIT(A) has rightly declined to condone the delay and did not admit the appeal. We do not find any infirmity in the order of the CIT(A), which we confirm. Accordingly, the appeal of the assessee is dismissed.

15. Since delay in filing the appeal has not been condoned, it becomes academic in nature to discuss the merit of the case and hence, they are not required to be adjudicated.

16. In the result, appeal filed by the assessee is dismissed.

ITA No.7652/M/2025 (AY 2019-20)

17. Facts of the above appeal and grounds raised by the appellant are similar to those in ITA No.7651/M/2025 (AY 2018-19) decided above. Following the reasons given therein, this appeal is also dismissed.

18. In the result, both the appeals of the assessee are dismissed. Order is pronounced on 30.01.2026.

5. We have heard Mr. Pankaj Toprani along with Mrs. Krupa Shah, learned

counsels appearing on behalf of the Appellant-Assessee, and Mr. Prathmesh Bhosale, learned counsel appearing on behalf of the Respondent-Revenue.

6. Mr. Toprani, learned counsel for the Appellant-Assessee, submitted that the ITAT failed to adopt an appropriate approach which the law would require while considering an application for condonation of delay. According to him, the Appellant-Assessee had placed on record sufficient and bonafide reasons explaining the delay in filing the appeals before the CIT(A) NFAC. He further submitted that the Appellant-Assessee had also explained that the denial of exemption under Section 10(23C)(iiiab) of the Act was solely on account of an inadvertent error committed by its CA in not claiming the exemption under the correct statutory provision while filing the ITR.

7. It was further submitted that the ITAT, by merely affirming the order of the CIT(A) on the ground of delay, failed to consider the merits of the Appellant-Assessee's claim and thereby deprived the Appellant-Assessee of an opportunity to establish its entitlement to exemption under Section 10(23C)(iiiab) of the Act. According to the learned counsel, such an approach has resulted in serious prejudice to the Appellant-Assessee. Learned counsel further submitted that the Appellant-Assessee is a non-profit educational institution engaged in imparting education and is otherwise entitled to the benefit of exemption under Section 10(23C)(iiiab) of the Act. It was contended that the refusal to condone the delay has resulted in denial of the statutory exemption on technical grounds, which has saddled the Appellant-Assessee with a substantial tax liability and has adversely affected its functioning and financial affairs.

8. In support of his submissions, Mr. Toprani placed reliance on the decision of the Supreme Court in **Inder Singh v. State of Madhya Pradesh**[1] to contend that, while considering an application for condonation of delay, the Court is required to adopt a liberal and justice-oriented approach and that a litigant ought not to be non-suited on a mere technical ground of limitation where a bonafide and sufficient explanation has been furnished.

9. *Per contra*, Mr. Prathmesh Bhosale, learned counsel appearing on behalf of the Respondent-Revenue, supported the impugned order passed by the ITAT. He submitted that there was an inordinate and unexplained delay on the part of the Appellant-Assessee in preferring the appeals before the CIT(A), NFAC and that both the CIT(A) NFAC as well as the ITAT had rightly declined to condone the delay. It was further submitted that the Appellant-Assessee itself had filed the ITR by claiming exemption under an incorrect provision of the Act and, therefore, the benefit of exemption under Section 10(23C)(iiiab) of the Act was rightly denied while processing the return.

10. Having heard the learned counsel appearing on behalf of the parties and have perused the proceedings with their assistance. In the facts of the present case, we are of the considered view that the ITAT, by the impugned order dated 30th January 2026, has adopted a pedantic approach. The record indicates that the Appellant–Assessee had explained the reasons for the delay before both the CIT(A), NFAC as well as the ITAT. In our considered opinion, such reasons assigned for the delay deserved due consideration in the facts and circumstances of

1 2025 SCC OnLine SC 600

the present case. We are, therefore, in agreement with the submissions advanced by the learned counsel appearing on behalf of the Appellant–Assessee that the delay in filing the appeals deserve to be condoned and the matter ought to be heard and decided on its own merits.

13. Our view is fortified by the decision of the Supreme Court in the case of **Inder Singh (supra)**, upon which reliance has rightly been placed by the learned counsel for the Appellant–Assessee. In the said decision, the Supreme Court has succinctly enunciated the governing principles relating to condonation of delay and has held that, in an appropriate case, the merits of the matter deserve to be examined and should not be defeated merely on the technical ground of limitation. The relevant observations of the aforesaid decision of the Supreme Court are reproduced hereunder:

> 13. In the present case, the contentions of the appellant, on first blush appears to be attractive, inasmuch as the State cannot be given any undue indulgence as compared to an ordinary litigant, especially in matters of limitation. There is no doubt that all parties, whether or not State under Article 122 of the Constitution, are required to act with due diligence and promptitude.
> 14. There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.
> 15. In the present case, the filing of the Review Petition before the First Appellate Court was with a delay of two years and four months and the Second Appeal before the High Court was delayed by about a year from the date of the dismissal of the Review Petition i.e., 30.09.2019. Pausing for a moment, it is necessary to indicate that in the present case, the dispute over title of a land is not between private parties, but rather between the private party and the State. Moreover, when the land in question was taken possession of by the State and allotted for public purpose to the Youth Welfare Department and the Collectorate and has continued in the possession of the State, the claim of the State that it is government land cannot be summarily discarded. We find, upon a perusal of the record, that the appellant had, in fact, filed an execution case for taking over possession of the land, which would demonstrate clearly the admitted position that he was not in possession thereof. Thus, the matter would, in our considered view, require adjudication on its own merits due to various reasons, inter alia, the fact that a new district has been formed after the initial claim of the appellant of being allotted the land in the years 1975-1976/1977-1978. Therefore, the delay of 1537 days reckoned from 01.10.2015 i.e.

when the First Appellate Court decreed the suit, includes two years and four months delay in filing a Review Petition (which was itself dismissed on the ground of delay by the First Appellate Court) and of about a year thereafter for filing the Second Appeal before the High Court, in the peculiar facts and circumstances of the case, which, at the cost of repetition relate to land claimed by the State as government land and in its possession, persuade us to not interfere with the Impugned Order. Relevantly, initially the suit was dismissed by the Trial Court, which decision was reversed by the First Appellate Court.

16. The Court in Ramchandra Shankar Deodhar v. State of Maharashtra, (1974) 1 SCC 317 held:

> '10. ... There was a delay_of more than ten or twelve years in filing the petition since the accrual of the cause of complaint, and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Article 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110, 116: (1969) 2 SCR 824] "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit…... It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose".'
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> (emphasis supplied)

17. No doubt, Ramchandra Shankar Deodhar (supra) relates to a writ petition, but the statement of law laid down is clear. Sheo Raj Singh (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in State of Manipur v. Kotin Lamkang, (2019) 10 SCC 408. In A B Govardhan v. P Ragothaman, (2024) 10 SCC 613, the Court considered as under:

> 37. In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that "justice on merits" is to be preferred as against what "scuttles a decision on merits". Albeit, while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595]].
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> 38. In N.L. Abhyankar v. Union of India [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah L 503], a Division Bench of the Bombay High Court at Nagpur considered, though in the context of. delay vis-à-vis Article 226 gf. the Constitution, the decision in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur,(1992) 2 SCC 598], and held that: (N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah L 503], SCC OnLine Bom para 22)
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> "22. ... The real test for sound exercise of discretion by the High Court in this regard is not the physical running-of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer

that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay."

(emphasis supplied)

39. The Bombay High Court's eloquent statement of the correct position in law in N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah L 503] found approval in Municipal Council, Ahmednagar v. Shah Hyder Beig [Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48] and Mool Chandra v. Union of India [Mool Chandra v. Union of India, (2025) 1 SCC 625].

40. In the wake of the authorities abovementioned, taking a liberal approach subserving the cause of justice, we condone the delay and allow lA No. 16203 gf 2019, subject to payment of costs of Rs. 20,000(Rupees twenty thousand) by the appellant to the respondent." (emphasis supplied)

18. Considering the above pronouncements and on an overall circumspection, we are of the opinion that the Second Appeal deserves to be heard, contested and decided on merits. However, a not of caution is sounded to the respondent to exhibit promptitude in like matters henceforth and in futuro, failing which the Court may not be as liberal.

(emphasis supplied)

14. Considering the aforesaid principles of law and the facts of the present case we are of the view that the impugned order passed by the ITAT requires to be quashed and set aside. The appeals are allowed on the questions of law raised, and the delay in filing the appeals is condoned. The appeals are therefore restored to the file of the CIT (A) to decide the appeals on merit.

15. In the aforesaid circumstances the Appeals are allowed on the question of law raised. No costs.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)

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