



**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, V.P.  
AND  
SHRI GIRISH AGRAWAL, A.M.**

ITA No.5080/Mum/2024		A.Y.2012-13
Dinesh Ghanshyam Jani, 19/21, 4 <sup>th</sup> Floor, Bora Bazar, Street Fort, Mumbai		ACIT-4(3)(1), Mumbai
(Appellant)	Vs.	(Respondent)
PAN		ACNPJ 3582D
Assessee by		Shri Sharwan Kumar Jha,
Revenue by		Shri R.R. Makwana, Addl. CIT
Date of hearing		09.01.2025
Date of pronouncement		15.01.2025

**ORDER**

**PER SAKTIJIT DEY, V.P.:**

This is an appeal by the assessee against order dated 30.11.2023 passed by learned Commissioner of Income Tax (Appeal) [in short the ‘CIT(A)]-49, Mumbai for the Assessment Year (A.Y.) 2012-13.

2. At the outset, we must observe, registry has pointed out delay of 243 days in filing the appeal. An application along with affidavit has been filed



by the assessee, seeking condonation of delay. It is the say of the assessee that the order passed by learned First Appellate Authority was not received through any mode of communication up to August, 2024. The assessee could only get to know about the order when his counsel was attending to some other income tax matter. Thereafter, the assessee obtained a copy of the order from the Department and filed the present appeal. Thus, it is the contention of the assessee that the delay in filing the appeal was due to *bona fide* reasons.

3. Having considered rival submissions, we are satisfied that the delay in filing the appeal was due to sufficient cause. Therefore, we are inclined to condone the delay and admit the appeal for adjudication.

4. The dispute in the present appeal is addition of an amount of Rs.41,81,79,265/- under Section (u/s.) 68 of the Income Tax Act, 1961 (in short 'the Act'). Of course, the assessee has raised a preliminary issue of violation of Rules of natural justice.

5. Briefly the facts are, the assessee is a resident individual. As stated by the Assessing Officer, for the assessment year under dispute, assessee did not file any return of income u/s. 139(1) of the Act. Subsequently, the Assessing Officer received information from the Investigation Wing of the



Department that in the year under consideration, the assessee had received accommodation entries amounting to Rs.19,70,000/- from another individual, namely, Mr. Chandrakant Prahalad Bhai Patel. Based on such information, the Assessing Officer reopened the assessment u/s. 147 of the Act. In course of the assessment proceeding, the Assessing Officer noticed that in an account held with Union Bank of India credit entries of Rs.41,81,79,265/- were appearing during the period 01.04.2016 to 31.03.2017, which includes the accommodation entry of Rs.19,70,000/-. He, therefore, called upon the assessee to explain the nature and source of such credit transactions. The Assessing Officer further intimated the assessee that in the event of failure to properly explain the nature and source, the amount in question would be treated as unexplained cash credit u/s. 68 of the Act. As observed by the Assessing Officer, the assessee neither responded to any of the statutory notices issued u/s. 148 or 142(1) of the Act nor made any compliance. Therefore, the Assessing Officer proceeded to complete the assessment ex-parte u/s. 144 of the Act, to the best of his judgment. While doing so, he added back the amount of Rs.41,81,79,265/- u/s. 68 of the Act.

6. Against the assessment order so passed, the Assessing Officer preferred an appeal before learned First Appellate Authority. Since the



assessee did not appear in course of first appellate proceedings, as well, learned First Appellate Authority proceeded to decide the appeal ex-parte and while doing so, confirmed the addition made by the Assessing Officer.

7. Before us, learned counsel appearing for the assessee, though, conceded that no representation was made on behalf of the assessee either in course of assessment proceedings or first appellate proceeding, however, he submitted that the assessment order passed is invalid as it is undated. Further, he submitted, the Departmental Authorities should have provided adequate opportunity to the assessee, in the interest of fair play and justice. Drawing our attention to the assessment order, learned counsel submitted that when the Assessing Officer admits that the credit amount of Rs.41,81,79,265/- pertains to the period 01.07.2016 to 31.03.2017, no addition could have been made in the impugned assessment year. He submitted, this basic fact was also ignored by learned First Appellate Authority. However, learned counsel submitted, given an opportunity, assessee will explain the facts before the Departmental Authorities.

8. The learned Departmental Representative submitted, the assessee is a chronic defaulter as he has failed to comply to the notices issued not only by the Assessing Officer but learned First Appellate Authority. He submitted,



in the face of complete non-cooperation from assessee's side, the Departmental Authorities did not have any other option but to proceed ex-parte. He submitted, since adequate opportunity has been granted by the Departmental Authorities, no further leniency should be shown to the assessee.

9. We have considered rival submissions and perused materials on record. Prima facie, it is evident that the assessee remained totally non-compliant to various notices issued by the Assessing Officer in course of assessment proceedings. Therefore, the Assessing Officer, had no other option but to proceed with the in absence of the assessee. Even the situation did not improve in course of proceedings before the First Appellate Authority. From Paragraph 3.1 of the First Appellate Authority order, it is evident that though several opportunities were granted to the assessee to represent his case, however, there was complete lack of response from assessee's side. Therefore, learned First Appellate Authority proceeded to decide the appeal ex-parte.

10. Keeping in view the complete lack of cooperation from assessee's side, we cannot blame the Departmental Authorities in completing the proceedings in the manner they did. However, perusal of the assessment



order reveals that the Assessing Officer in Paragraph 4.6 has observed that the Bank statement from Union Bank of India with reference to a particular account of the assessee reveals total credits amounting to Rs.41,81,79,265/- for the period 01.04.2016 to 31.03.2017, which included transactions relating to accommodation entry of Rs.19,70,000/-. Therefore, the contention of the assessee that if the transactions do not pertain to the impugned assessment year, the addition could not have been made, appears to have some merit. However, the assessee's contention has to be verified factually with reference to the concerned Bank account and other facts which are on record or may be brought on record.

11. We have further noted, under identical facts and circumstances relating to identical nature of dispute, the Coordinate Bench has restored the matter back to the Assessing Officer while deciding assessee's appeal in ITA No. 5010/Mum/2024, pertaining A.Y. 2011-12 vide order dated 21.11.2024. Thus, in view of the facts discussed above, we are of the opinion that the assessee deserves an opportunity to contest the validity of addition by bringing on record the relevant facts and supporting evidences. Since the assessee did not get the opportunity to do so due to ex-parte orders passed by the Departmental Authorities, in the interest of fair play and justice, we



are inclined to set aside the impugned order of learned First Appellate Authority and restore the issue to the file of the Assessing Officer for de novo adjudication after providing due and reasonable opportunity of being heard to the assessee. The assessee is directed to actively cooperate in finalization of the proceedings. Grounds are allowed for statistical purposes.

12. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 15/01/2025.

Sd/-

(GIRISH AGRAWAL)  
(ACCOUNTANT MEMBER)

Sd/-

(SAKTIJIT DEY)  
(VICE PRESIDENT)

Mumbai, Dated: 15.01.2025

Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai