

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA (SMC) BENCH, AGRA**

BEFORE : SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

**ITA Nos. 113, 114 & 115/Agr/2024
Assessment Years: 2015-16 & 2016-17**

Mr. Chandrapal Singh, 123, VishwaLaxmi Nagar, GoverdhanChauraha, Mathura-282502 (U.P.)	v.	Income-tax Officer, Shivpuri Main Building Gwalior-474002, M.P.
PAN : BXIPS2007K		
(Appellant)		(Respondent)

Assessee by	S/Sh. Rajendra Sharma & Majuj Sharma, Adv.
Revenue by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	01.01.2025
Date of pronouncement	21.-1.2025

ORDER

These three appeals bearing ITA Nos. 113/Agr/2024 to 115/Agr/2024 for assessment years 2015-16 and 2016-17 were all filed by the assessee before Income Tax Appellate Tribunal, Agra Bench, Agra. These three appeals were heard together by the SMC Bench, and are disposed off by this common order. First, I will take up appeal of the assessee bearing ITA no. 113/Agr/2024 for assessment year 2015-16.

ITA No. 113/Agr/2024-Assessment Year 2015-16:

2. This appeal in ITA No.113/Agr/2024 for the assessment year 2015-16 has arisen from the appellate order dated 20.06.2023 [DIN & Order No.

ITBA/NFAC/S/250/2023-24/1053812553(1)], passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi, which appeal before Id. CIT(A) in turn has arisen from the assessment order dated 27.12.2017 passed by Assessing Officer u/s. 143(3) of the Income-tax Act, 1961.

3. Grounds of Appeal raised by the assessee in the memo of the Memo of appeal filed with Income Tax Appellate Tribunal, Agra Bench, Agra, reads as under :

“1 That learned CIT Appeal has passed the Ex-party order without allowing of the opportunity to the appellant, the notices issued to the appellant has not been served being the address mentioned over the notices was of Shivpuri which was not correct. The exparty appellate order passed by the CIT Appeal is liable to be set aside.

2 That the learned CIT Appeal has erred on facts and in law while sustaining the addition for Rs. 32,30,790/-, represent the peak investment, as calculated by the AO, which the AO has made, invoking the provisions of section 69 of Income tax Act, no addition is liable to be made, addition made by the AO, sustained by CIT Appeal is liable to be deleted.

3 That while making and sustaining the addition, the authorities below has not considered and appreciated the facts that the assessee is doing business since last so many years. The deposits made in the bank account are out of the accumulated income from earlier years and also out of the money available with him. Taking into consideration, the facts, no addition is liable to be made, the addition made by the AO, sustained by learned CIT Appeal is liable to be deleted.

4 That provisions of sec 69 are not attracted in the case, addition made, in this case is liable to be deleted.

5 That the CIT Appeal has passed the ex-party order without allowing the opportunity to the appellant, the appellate order passed dt. 20.06.2023 without allowing of the opportunity is bad in law, liable to be set aside.”

4. At the outset, learned counsel for the assessee drew attention of the Bench(SMC)to the fact that this appeals is filed belatedly by 315 days(actual delay 224 days as appellate order passed by Id. CIT(A) is dated 20.06.2023 instead of 20.03.2023 stated in Form No. 36) beyond the time prescribed u/s. 253(3) of the Income-tax Act, 1961. Learned counsel for the assessee submitted that application for condonation of delay duly supported by the affidavit of assessee are duly filed with ITAT, Agra Bench, Agra which are placed on record in file at Page 1-5 of the Paper Book filed by the assessee with ITAT. The said application/affidavit are supported by evidences such as copies of electricity bill and bank passbook(first page carrying account information), which are placed on record in file at Page 6-8 of the Paper Book. The assessee has claimed in the application/affidavit praying for condonation of delay that when the appeal was filed by the assessee before Id. CIT(Appeals) on 09.08.2018, the assessee was living at Shivpuri (MP) which was reflected in the Form no. 35 filed with learned CIT(A), but thereafter the assessee shifted permanently to Mathura(UP) due to compelling family reasons. The assessee has filed evidences by way of electricity bills/receipts of 2020 and 2024, bank passbook(first page carrying account information), wherein new address of the assessee at Mathura is reflected. The assessee submitted that the

assessee has opted in Form No. 35 filed before the CIT(Appeals) that the notice/communication may not be sent by email. It was submitted that in the Form No. 35 , email address of the assessee's advocate Mr. Jugal Kishore Shrivastava was given (email id jk.adv240@gmail.com). It was submitted that the assessee was not aware of the proceedings before the CIT(Appeals), as the earlier counsel of the assessee, Shri Jugal Kishore Shrivastava, Advocate did not inform the assessee about the proceedings being undertaken by the Id. CIT(Appeals), nor the assessee received any notice. It was submitted that it is only when in February, 2024 when the assessee asked the earlier counsel, Shri Jugal Kishore Shrivastava about the status of the pendency of appeal with Id. CIT(A), the assessee was informed that the appellate order has already been passed by the Id. CIT(A) ex parte dismissing the appeal of the assessee. It was submitted that the assessee, thereafter, immediately took steps to file second appeal with ITAT , which was filed on 30th March 2024. Prayers were made to condone the delay in filing this appeal belatedly with ITAT, Agra Bench, Agra. Learned counsel for the assessee also relied upon the judgment and order of Hon'ble Bombay High Court in the case of *Nav Chetna Charitable Trust vs. CIT*, reported in (2024) 169 *taxmann.com* 543(Bombay), judgment and order of Hon'ble Supreme Court in the case of *Collector Land Acquisition, Anantnag v. Mst. Katiji &*

Ors, reported in 1987 AIR 1353 and judgment and order of Hon'ble Bombay High Court in the case of *Hindalco Industries Limited v. UOI*, reported in (2024) 158 taxmann.com 485(Bom.). Thus, the learned counsels for the assessee prayed for condonation of delay in filing this appeal belatedly with ITAT, Agra Bench, Agra.

5. Learned Sr. DR, on the other hand, left the matter to the discretion of the Bench, so far as condonation of delay is concerned.

6. After hearing both the parties, I am of the considered view that the delay in filing of this appeal is required to be condoned, as the assessee has demonstrated sufficient and reasonable cause in filing this appeal with ITAT, Agra Bench, Agra belatedly beyond the time prescribed u/s 253(3). It is averred by the assessee that the assessee had filed an appeal with Id. CIT(Appeals) in 2018, wherein in the Form No. 35, the assessee has declared the address of Shivpuri, Madhya Pradesh as the assessee was living at Shivpuri, Madhya Pradesh, at that point of time. It is further averred that, thereafter, due to family circumstances, the assessee permanently shifted to Mathura, Uttar Pradesh. The assessee has filed evidences by way of electricity bills/bank passbook details, to substantiate that the assessee had shifted to Mathura. It is also averred that the assessee gave in Form No. 35 filed with Id. CIT(A), email id of its advocate at Shivpuri Shri Jugal Kishore Shrivastava. The assessee

has stated in Form No. 35 that notices/communication may not be sent by email . It is also averred that the assessee lost contact with said advocate at Shivpuri, after permanently shifting to Mathura, UP. It is also averred that notices issued by Id. CIT(A) by email to the assessee's advocate were not handed over to the assessee. The assessee was not informed by his advocate as to proceedings conducted by Id. CIT(A). No notices were received by the assessee from Id. CIT(A) , and the assessee was not aware of the proceedings conducted by Id. CIT(A). It is also claimed that it is in February, 2024 , when the assessee called his advocate Shri Jugal Kishore Shrivatsava , Shivpuri, that he was informed that Id. CIT(A) has dismissed the appeal of the assessee, vide appellate order dated 20.06.2023. The assessee was not even handed over the appellate order passed by Id. CIT(A) by the said advocate at Shivpuri, as averred by the assessee. The Id. CIT(A) has dismissed the appeal of the assessee on 20.06.2023 ex-parte, Application for condonation of delay is filed along with affidavit before ITAT, which are placed on record in file. Learned Sr. DR could not controvert the averments made by the assessee in the application/affidavit filed by the assessee praying for condonation of delay. The assessee has filed the appeal with the Tribunal on 30.03.2024 belatedly with a delay of 315 days(actual delay 224 days) beyond the time prescribed u/s 253(3). The reasonable and

sufficient cause for filing this appeal belatedly has been shown, which is not controverted by the department. The assessee is not likely to gain by filing this appeal belatedly. When the technicalities are pitted against advancement of substantial justice, Courts will lean towards advancement of substantial justice, unless malafide is at writ large. I donot find any malafide on the part of the assessee in filing this appeal belatedly with ITAT. The assessee is not likely to gain anything by filing this appeal belatedly with ITAT . Therefore, in the interest of justice, I condone the delay of 315 days(actual delay 224 days) in filing this appeal in ITA no. 113/Agr/2024 belatedly beyond the time prescribed u/s 253(3) of the assessee, and proceed to adjudicate the appeals on merits. Reference is drawn to judgment and order of Hon'ble Apex Court in the case of Collector, Land Acquisition , Anantnag v. Mst. Katijee&Ors.(supra)

7. Brief facts of the case are that the assessee filed his return of income belatedly on 31.03.2017, declaring income of Rs.5,11,380/-. The assessee is in the business as Contractor and also engaged in trading in share market . Case of the assessee was selected by the Revenue for framing scrutiny assessment under CASS. Statutory notices u/s. 143(2) and 142(1) were issued by the Assessing Officer from time to time during the course of assessment proceedings. The assessee participated in the

assessment proceedings, and filed part-replies to the queries made by the AO during assessment proceedings. The AO obtained bank statements directly from the bank. The assessee submitted before the AO that the assessee is filing return of income for last 6-7 years and has his own capital of Rs. 25-30 lacs. The assessee submitted that the assessee's wife is also assessed to income-tax. The assessee submitted before the AO that the assessee has traded in the shares to the tune of Rs. 75-80 lacs during the year under consideration. The assessee submitted that his own capital of Rs. 6 lacs is invested in share business as well the assessee has invested Rs. 4 lacs borrowed from wife and other, which also stood invested in share business. The assessee also explained that the assessee has sold land during the year under consideration. There was share transactions undertaken by the assessee, and as per AO the assessee's peak investment in share transactions was to the tune of Rs.32,30,790/- (peak investment) , which the assessee was called upon by the AO to explain the same. The assessee submitted that the assessee is doing contractor work as well as share market transactions. The assessee has invested Rs.25 to 30 lacs in the capital and is filing return of income for last 6-7 years. Shares were sold time and again and the total turnover in shares were to the tune of Rs. 75 to 80 lacs. The assessee also submitted that the assessee also

sold its land at Kota, Rajasthan during the year under consideration, of which the share of the assessee is Rs.23,75,000/-(25%) as there are four co-owners of the said land. The assessee had purchased the said land at Kota, Rajasthan in 2013-14 , and short term capital gain earned by the assessee was to the tune of Rs.4,59,065/-. The assessee submitted before the AO that the said short term capital gain was not declared by the assessee in the return of income filed with Revenue, and prayers were made by the assessee before the AO to add the same to the income of the assessee so that the same can be brought to income-tax. The afore-said short term capital gains were separately added by the Assessing Officer to the income of the assessee, and the matter attained finality so far as chargeability to tax of the said short term capital gains are concerned. However, the Assessing Officer was not satisfied with the explanation of the assessee with regard to the sources of making investments to the tune of Rs. 32,30,790/-(peak investment) made by the assessee for conducting business of share trading as the assessee did not produce any documents such as demat account, purchase-sale details, statement of affairs, broker statement of account etc, and the Assessing Officer brought the same to income-tax by adding the same to the income of the assessee, vide assessment framed u/s 143(3).

8. Aggrieved, the assessee filed first appeal with Id. CIT(A), and the Id. CIT(Appeals) issued as many as five notices to the assessee in the course of appellate proceedings. Except on one occasion, there was no response by the assessee. On 25.02.2021 when the assessee responded to Id. CIT(A) notice, the assessee sought adjournment. Ld. CIT(Appeals) dismissed the appeal of the assessee ex-parte for non-prosecution, wherein the assessment order passed by the Assessing Officer was upheld.

9. Still aggrieved, the assessee has filed second appeal with ITAT, Agra Bench, Agra, and at the outset, Id. Counsel for the assessee submitted that the learned CIT(Appeals) appellate order is not sustainable in the eyes of law, as the Id. CIT(Appeals) has not adjudicated the appeal of the assessee on merits. My attention was drawn to provisions of Section 250(6) of the Act. It was submitted that no enquiry has been made by the Id. CIT(Appeals) u/s. 250(4) of the Act. Ex-parte appellate Order was passed by Id. CIT(A) *in limine* without adjudicating the appeal on merits. Ld. Counsel submitted that the assessee was dealing in shares and peak investment of Rs.32,30,790/- was brought to tax by the Assessing Officer on the grounds that there were no proper explanations submitted by the assessee. It was submitted that the assessee has sold the property at Kota, Rajasthan

during the year under consideration and the assessee received Rs.23,75,000/- as his share of property (1/4th), which was invested in the share market. It was submitted that in any case, learned CIT(Appeals) has not decided the issues arising in appeal on merits and hence, prayers were made to set aside the matter to the file of Id. CIT(Appeals) for fresh adjudication. It was submitted that the assessee after filing appeal with Id. CIT(A) shifted his residence permanently from Shivpuri, Madhya Pradesh to Mathura, Uttar Pradesh due to compelling family reasons. No notice of hearings were received by the assessee, as email id of the erstwhile Advocate at Shivpuri, M.P. Mr. Jugal Kishore Shrivastava was given in Form No. 35, and he did not inform the assessee about email received from Id. CIT(A) fixing the date of hearings. The said advocate did not pursue the appeal filed by the assessee before Id. CIT(A). The assessee was not aware of the proceedings which were being conducted by Id. CIT(A), as the said advocate did not inform the assessee about the proceedings conducted by Id. CIT(A) nor the said Advocate submitted replies before Id. CIT(A). It was submitted that in Form No. 35 it was clearly stated by the assessee that notices/communications be not sent by E-mail. It was stated that the assessee did not received any notice from Id. CIT(A). The prayers were

made by Id. Counsel for the assessee to restore the matter back to file of Id. CIT(A) for fresh adjudication of the appeal of the assessee.

10. Learned Sr. DR fairly submitted that the matter can go back to the file of Id. CIT(Appeals) for fresh adjudication.

11. I have considered rival contentions and perused the material on record. I have observed that the assessee filed its return of income on 31.03.2017 ,declaring total income of Rs.5,11,380/-. Addition of Rs.32,30,790/- was made by the Assessing Officer towards peak investment made by the assessee in the share transactions business , as the assessee could not explain the sources of such investments made by him in the share trading business. Assessee has claimed that the assessee is dealing in share market for last 6-7 years and filing its return of income. The assessee has also claimed that his wife is also regularly assessed to tax. The assessee has claimed that the total transactions in share market were to the tune of Rs. 75-80 lacs during the year under consideration, wherein the shares were repeatedly purchased and sold , which culminated into turnover of Rs. 75-80 lacs. The assessee has claimed that part investments in shares were out of self owned capital as well borrowings from wife and others. The assessee has also claimed that the assessee has sold property at Kota, Rajasthan and received 1/4th share to the tune of Rs.23,75,000/-, which was claimed to have

been invested in the share transactions. The Id. CIT(A) dismissed the appeal of the assessee ex-parte in limine on the grounds of non prosecution of the appeal by the assessee , and assessment order passed by the AO was confirmed by Id. CIT(A), without deciding the issues arising in the appeal on merits. The claims and contentions of the assessee need verification and investigations of facts. Proceedings before Id. CIT(A) are extension of assessment. The powers of Id. CIT(A) are co-terminus with powers of the AO, which includes power of enhancement also. In the instant case, the learned CIT(Appeals) has passed an ex parte order in limine without deciding the issues arising in appeal on merits, which is not in consonance with provisions of Section 250(6). Even, Id. CIT(Appeals) has not made any enquiry before dismissing the appeal of the assessee, as contemplated u/s. 250(4) of the Act, and the appeal of the assessee was dismissed by Id. CIT(A) in limine ex-parte for non-prosecution, and without deciding the issues arising in the appeal on merits. There was no effective participation by the assessee before Id. CIT(A) during first appellate proceedings. The Id. CIT(A) did not even called for the assessment records. The Id. CIT(A) is required and obligated to pass order in compliance with the provisions of section 250(6), as Id CIT(A) is required to pass reasoned and speaking order on merits in accordance with law. The Id. CIT(A) has to state points

for determination, his decision and reasoning for the said decision, in the appellate order which is to be passed in writing by Id. CIT(A). The appellate order passed by Id. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by Id. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issues are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of Id. CIT(A) in deciding the issues. If the Id. CIT(A) simply dismiss the appeal merely because the assessee did not comply with the notices issued by Id. CIT(A) *in limine* without adjudicating issues arising in the appeal on merits, such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6), and also higher appellate authorities will be deprived to see what weighed in the mind of the Id. CIT(A) while adjudicating appeal as it will be an order passed without reasoning on the issues on merits. The appellate order of the CIT(A) is clearly in violation of section 250(6) of the Act and liable to be set aside. Merely

stating that the assessment order passed by AO is upheld, and that the assessee has not submitted details/documents is not sufficient. The Id. CIT(A) is not toothless as his powers are co-terminus with the powers of the AO., which even includes power of enhancement. It is equally true that the assessee also did not comply with the notices issued by Id. CIT(A) , and did not file the requisite details/documents to support his contentions. Thus, the assessee is equally responsible for its woes. Under these circumstances and fairness to both the parties, in the interest of justice, the appellate order of CIT(A) is set aside and the matter can go back to the file of Id. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. I direct the assessee to comply with the notices issued by Id. CIT(A) , otherwise Id. CIT(A) shall be free to pass the appellate order on merits in accordance with provisions of Section 250(6). I clarify that I have not commented on the merits of the issues in the appeal. Accordingly, this appeal of the assessee in ITA No. 113/Agr/2024 for assessment year 2015-16, stands allowed for statistical purposes. I order accordingly.

ITA No. 114/Agr/2024 (A.Y. 2016-17):

12. This appeal of the assessee in ITA No. 114/Agr/2024 for assessment year 2016-17 filed by the assessee before ITAT, Agra Bench,

Agra had arisen from the appellate order dated 10.05.2023(DIN & Order No. ITBA/NFAC/S/250/2023-24/1052728541(1)) passed by Id. CIT(A), NFAC, Delhi , dismissing the appeal filed by the assessee and confirming the assessment order dated 07.12.2018 passed by the AO u/s 143(3) of the 1961.Since the facts involved in this appeal of the assessee in ITA no. 114/Agr/2024 for assessment year 2016-17, grounds of appeal raised therein and the contentions/averments made by both the parties are similar to the appeal of the assessee in ITA No. 113/Agr/2024 for A.Y. 2015-16, my decision in ITA No. 113/Agr/2024 for assessment year 2015-16 vide this common order in preceding para's of this common order, restoring the matter to the file of Id. CIT(Appeals) for fresh adjudication on merits in accordance with law, as above, shall apply *mutatis mutandis* to this appeal of the assessee in ITA No. 114/Agr/2024 for assessment year 2016-17too , and consequently the matter is restored back to the file of Id. CIT(A) for fresh adjudication on merits in accordance with law. This appeal was also filed belatedly, and similar pleadings and averments w.r.t. prayers for condonation of delay are taken by both the parties as were taken by both the parties in ITA no. 113/Agr/2024 for assessment year 2015-16, and my decision to condone the delay and to proceed to adjudicate the appeal of the assessee on merits w.r.t. appeal in ITA no. 113/Agr/2024 for ay: 2015-16 shall apply

mutatis mutandis to appeal in ITA no. 114/Agr/2024 for assessment year 2016-17, and hence the delay in filing this appeal too shall also stand condoned. Accordingly, the appeal of the assessee in ITA No. 114/Agr/2024 for assessment year 2016-17 stands allowed for statistical purposes, with similar observations/ directions as were contained in my order in ITA no. 113/Agr/2024 for assessment year 2015-16. I clarify that I have not commented on the merits of the issue arising in the appeal in ITA no. 114/Agr/2024 for assessment year 2016-17. I order accordingly.

ITA No. 115/Agr/2024 (A.Y. 2015-16):

13.1 This appeal in ITA No. 115/Agr/2024 for assessment year 2015-16 was also filed belatedly, and similar pleadings and averments w.r.t. prayers for condonation of delay are taken by both the parties as were taken by both the parties in ITA no. 113/Agr/2024 for assessment year 2015-16, and my decision to condone the delay and to proceed to adjudicate the appeal of the assessee on merits w.r.t. appeal in ITA no. 113/Agr/2024 for ay: 2015-16 shall apply mutatis mutandis to appeal in ITA no. 115/Agr/2024 for assessment year 2015-16, and hence the delay in filing this appeal too shall also stand condoned, and I proceed to adjudicate the appeal on merits in accordance with law. I order accordingly.

13.2 This appeal of the assessee in ITA No. 115/Agr/2024 for assessment year 2015-16 filed by the assessee before ITAT, Agra Bench, Agra had arisen from the appellate order dated 20.06.2023(DIN & Order No. ITBA/NFAC/S/250/2023-24/1053812676(1)) passed by Id. CIT(A), NFAC, Delhi, dismissing the appeal filed by the assessee and confirming the penalty levied by the AO u/s 271(1)(c) to the tune of Rs. 9,47,990/-, which appeal before Id. CIT(A) had in turn arisen from the penalty order dated 21.06.2018 passed by the Assessing Officer u/s. 271(1)(c) of the Act, levying penalty of Rs.9,47,990/- against the assessee. The penalty so imposed by the AO was consequential to the addition of Rs.32,30,790/- made by the AO to the income of the assessee in the quantum assessment order dated 27.12.2017 passed by the AO u/s 143(3) of the 1961 Act, as the assessee failed to substantiate the sources of making investments in share trading business(peak investment), which assessment order in quantum was later confirmed by the Id. CIT(Appeals) vide ex-parte appellate order in limine dated 20.06.2023. Since the said ex-parte order dated 20.06.2023 of Id. CIT(Appeals) wrt quantum assessment has been set aside by me in the preceding para's of this common order, and the matter has been restored back wrt quantum additions to the file of Id. CIT(Appeals) for fresh adjudication on merits, while deciding the quantum appeal of the

assessee in ITA No. 113/Agr/2024 for A.Y. 2015-16 by me vide this common order, it will be fair and appropriate to restore this appeal pertaining to penalty imposed by Id. AO u/s 271(1)(c) which penalty has arisen out of quantum additions made by the AO which were later confirmed by Id. CIT(A), back to the file of Id. CIT(Appeals) for fresh decision on merits , after deciding the quantum appeal of the assessee on merits. Needless to say, both the parties shall be afforded reasonable opportunity of hearing. I clarify that I have not commented on the merits of the issues which had arisen in this appeal. I order accordingly.

14. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21/01/2025.

Sd/-

**(RAMIT KOCHAR)
ACCOUNTANT MEMBER**

Dated: 21st Januray, 2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra