

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM
AND
SHRI PRABHASH SHANKAR, AM**

आयकर अपील सं./ITA No.21/MUM/2025

(निर्धारण वर्ष / Assessment Year :2012-2013)

Inderpal Singh Chadha Flat No.1201, Ekta Heights, 16 th Road, Khar West, Mumbai	Vs.	ACIT-22(1), Mumbai
स्थायी लेखा सं./PAN No. : AADPC 2530 L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Ms. Karishma Agarwal, AR
राजस्व की ओर से /Revenue by	:	Shri Mahesh Pamnani, Sr.DR

सुनवाई की तारीख / Date of Hearing	:	12/02/2025
घोषणा की तारीख/ Date of Pronouncement	:	18/02/2025

आदेश / O R D E R

Per Prabhash Shankar, AM:

This appeal preferred by the assessee emanates from the order of the Id. CIT(A), Mumbai, dated 27.02.2024 for A.Y.2012-13 as per the following grounds of appeal :-

1. *Addition amounting to Rs, 1,26,50,251/- u/s.45 of the Income Tax Act, 1961:*

a. The CIT(A) has erred in confirming the addition of Rs. 1,26,50,251/- on sale of immovable property by the appellant where addition is determined as difference of Sale value of consideration of Rs. 1,57,60,901/- and LTCG paid on such sale of Rs. 31,10,650/- without considering the cost of acquisition and exemption claimed by the appellant.

The Ld. CIT(A) has erred in confirming the addition of Rs. 26,50,261/- against the cost of acquisition reduced by the appellant from sales consideration while calculating the Capital Gain without taking into consideration provision of Sec 48 of the Income Tax Act

original return the assessee had offered 31,10,650/- as long term capital gain after deducting the cost of Acquisition Rs. 26,50,251/- and deduction u/s 54/54B/54D/54EC/54F/54G/54GA Rs. 1,00,00,000/-. However, the assessee had not submitted any documents regarding the purchase of said property. Hence, cost of acquisition could not be ascertained in absence of any valid document. The assessee asked to file the documentary evidence vide show cause dated 13.12.2019. The assessee replied the show cause notice but did not file any documentary evidences regarding the cost of acquisition of the property. In the absence of any details furnished by assessee, the sources of acquisition of the property sold also remained unexplained. Therefore, full value of consideration in hands of assessee was Rs. 1,57,60,901/- as the assessee had offered LTCG of Rs. 31,10,650/- in the original return. Hence, difference between the full value of consideration and LTCG paid Rs. 1,26,50,251/- was added to the total income of the assessee under the head Capital Gains u/s 144 of the Income Tax Act,1961.

4. Even in the appellate proceedings, there was no compliance. The assessee did not come forward with any explanation to the impugned addition despite adequate opportunity of hearing. During appellate proceedings, numerous notices under section 250 of the Act were issued to the assessee, which has also been tabulated by the Id. CIT(A) as under:-

<i>Date of Notice issued u/s.250</i>	<i>Date of hearing on or before</i>	<i>Mode of Notice</i>	<i>Reply/Remarks</i>
23/01/2021	08/02/2021	Online/ITBA	No reply.
25/08/2021	31/08/2021	Online/ITBA	No reply.
07/02/2024	19/02/2024	Online/ITBA	No reply.

5. In the appellate proceedings, the initial burden lies on the assessee to prove that the facts and the findings of the Assessing Officer are incorrect with the help of verifiable documents. In this case, the assessee did not choose to avail the opportunities in the appellate proceedings which has led to the only conclusion that he had no evidence or explanation against the order of the Assessing Officer. Accordingly, the Id.CIT(A) dismissed the appeal on account of non-prosecution.

6. Before us, Id. AR submitted that the principle of natural justice had not been followed in its case. The Id. CIT(A) has passed the impugned order without providing sufficient opportunity of hearing to it. The Id AR submitted that another opportunity may be provided to the assessee so that it could be able to represent its case before the Id. CIT(A).On the other hand, Id. Sr. DR relied on the assessment and appellate orders.

7. We have heard the rival parties and perused the material available on records. It is observed that the Id.CIT(A) dismissed the appeal solely on the ground of non-prosecution. He failed to adjudicate the issues raised in the grounds of appeal and did not examine the material available on record. Such dismissal without deciding the appeal on merits is contrary to the principles of natural justice. It is settled law that it is the duty of the appellate authority to dispose of an appeal on merits after considering the material on record, even if the appellant fails to appear.

8. However, it is equally true that it is the fundamental duty of the assessee to diligently pursue the appeal and comply with the notices and proceedings initiated by the Revenue authorities. The framework of the Act and the e-proceedings system rely heavily on the co-operation and active participation of the taxpayer. Despite the notices under section 250 of the Act by the CIT(A), no substantive explanation was submitted. The failure of the assessee to make any response reflects gross negligence and an indifference that is unacceptable. The principles of natural justice operate both ways, while the Revenue authorities are required to provide a reasonable opportunity of being heard, the taxpayer is equally obligated to co-operate with the authorities and utilize the opportunities extended. In the present case, despite receiving adequate opportunities, the assessee displayed a casual approach and indifference, which not only delayed the appellate proceedings but also burdened the judicial system. Such conduct cannot be condoned.

9. In light of the non-compliant attitude of the assessee, levy of cost needs to be evaluated in this case as cost serves as a necessary deterrent to ensure that taxpayers act with due diligence in pursuing their appeals and respecting the timelines and processes laid down under the law. It also emphasizes the principle that while justice must be ensured, the system cannot cater to indolence or negligence on the part of the assessee.

10. As the Id. AR has requested before us that the assessee shall be given one more opportunity and this request which was not objected

by the Id. DR, in such a scenario, we are of the opinion that the scales of justice demands that the matter should be verified and revisited at the level of Id. CIT(A) and accordingly, we are of the considered view that the matter should be remanded back to the file of Id. CIT(A) for *de novo* adjudication by him while applying the principles of natural justice after affording sufficient opportunity of being heard to the assessee.

11. Moreover, considering assessee's non-compliant and non-co-operative attitude and lack of diligence in pursuing the appeal, we impose a cost of Rs.11,000/- on it. The cost shall be deposited to the credit of the Income Tax Department within 15 days of the receipt of this order and proof of payment shall be submitted before the Id.CIT(A). Thus, the grounds of appeal of the assessee stand allowed for statistical purposes.

12. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 18/02/2025.

Sd/-
(NARENDER KUMAR CHOUDHRY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(PRABHASH SHANKAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक Dated 18/02/2025
Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .

Inderpal Singh Chadha
Flat No.1201, Ekta Heights,
16th Road, Khar West,
Mumbai

2. प्रत्यर्थी / The Respondent-

ACIT-22(1), Mumbai

3. आयकर आयुक्त(अपील) / The CIT(A),

4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, **Mumbai**

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY
ORDER,

**(Assistant
Registrar)**

**आयकर अपीलीय
अधिकरण, मुंबई/
ITAT, Mumbai**