

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4543/M/2024  
Assessment Year: 2011-12**

<b>Mrs. Bindya Ashok Dwara,</b> Flat No.204, Building 9, Foxhill 9, Motor City, Dubai – 124055 <b>PAN: AKNPD9713A</b>	Vs.	<b>Commissioner of Income Tax (Appeals),</b> Government of India, Ministry of Finance, Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi – 110001
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Harman Sodhi, Ld. A.R.  
Revenue by : Ms. Monika H. Pande, Ld. Sr. D.R.

Date of Hearing : 18 . 12 .2024  
Date of Pronouncement : 18.02.2025

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 31.07.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2011-12.

**2.** In the instant case, the Assessee did not file any return of income either of the sections i.e. 139(1)/139(4) of the Act within the due date as prescribed. Subsequently on the basis of credible evidence, it was found by the Assessing Officer (AO) that the Assessee had purchased immovable property valued at Rs.1,47,90,000/- but not offered the same to taxation and therefore the case of the Assessee was reopened while recording the reasons for reopening u/s 147 of the Act and issuing the notice dated 30.03.2018 u/s 148 of the Act. The Assessee neither responded to the notice u/s 148 of the Act nor filed any submissions in response to various statutory notices. And therefore the AO by considering the material available on record and the information, ultimately held the amount of Rs.1,47,90,000/- {value of the property} as unexplained investment u/s 69 of the Act and added the same in income of the Assessee.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner and filed various documents in support of her case, however with a delay of more than six years and without filing any application seeking such condonation of delay either.

**4.** The Ld. Commissioner ultimately dismissed the appeal of the Assessee mainly on the reasons that source of investment is unverifiable. The appeal is delayed and the Assessee has not followed procedure or filed any application seeking such condonation of delay in filing of appeal and also not cared to file any application under rule 46A of the Rules, seeking admittance of additional evidences. The Ld. Commissioner ultimately affirmed the aforesaid addition, by dismissing the appeal of the Assessee.

**5.** The Assessee, being aggrieved, challenged the impugned order by filing the instant appeal before the Tribunal and has mainly claimed as under:

*” That she is settled outside India in the United Arab Emirates since her marriage in 1983 and her current residential address is 204, Foxhill 9, Motor City, Dubai- 124055. She has been a non resident as per the Act since her marriage in 1983 itself and therefore she has not filed any return of income for the A.Y under consideration u/s 139(1)/ 139(4) of the Act as her income in India was below than the minimum income chargeable to tax as per the Act. During the AY under consideration Mr. Ashok Sunderdas Dwara, husband of the Assessee, had purchased a residential flat in Mumbai addressed at Flat No.601, 6<sup>th</sup> Floor, Mr. Anmol Bright SV Road, Goregoan (West), Mumbai. She was added as a joint owner in the registration deed as per Indian tradition and convenience purposes, by Assessee’s husband. The flat was purchased for an amount of INR Rs.1,47,90,000/- out of the funds that were earned in Dubai and UAE and saved all over the years by the husband of the Assessee, who repatriated to Mumbai into the NRO/NRI bank accounts of Mr. Ashok Sunderdas Dwara. The Assessee was having nothing outstanding tax payment in the assessment order, however when her refund for the A.Y. 2023-24 was adjusted against the outstanding payment of A.Y.2011-12, then only the Assessee inquired into the matter and collected relevant information physically through professionals contacting jurisdictional AO. It is a fact that copy of the assessment order was and still is not available on the income tax portal. However, the Ld. Commissioner without considering the actual facts of the case pertaining to the disputed income dismissed the appeal of the Assessee. Therefore, the order passed by the Ld. Commissioner is liable to be set aside. Alternatively, the Assessee has claimed that if the chance be given to the Assessee then the Assessee can demonstrate the genuineness of its claim.*

**6.** On the contrary, the Ld. D.R. refuted the claim of the Assessee.

**7.** We have heard the parties and perused the material available on record. The Assessee has claimed that she is an NRI and during the assessment proceedings and the appellate proceedings, was not in India and during the AY under consideration has also not earned

any taxable income, therefore she did not file any return of income. However, the Assessee on getting information about the passing of the assessment order and the making of addition, though preferred first appeal before the Ld. Commissioner with a delay of more than six years but did not file any appropriate application seeking such condonation of delay in filing of the first appeal. The Assessee also filed new/additional evidences before the Ld. Commissioner but without filing appropriate application under rule 46A of the Income Tax Rules, 1962 (in short "the Rules"). Therefore, the Ld. Commissioner was constrained not to condone the delay and not to entertain the additional evidences and therefore dismissed the appeal of the Assessee by affirming the addition.

**7.1** Considering the peculiar facts and circumstances in totality, as the issue involved in the instant case remained to be adjudicated in its right perspective and proper manner and the Assessee did not get proper opportunity to represent her case and therefore for just and proper decision of the case and in the interest of substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision afresh on the condonation of delay and on establishing the bonafide and genuine cause for condonation of delay by the Assessee, to decide admissibility of the new/additional evidence and the case on merits.

**7.2** The Assessee is also directed to file appropriate application for condonation of delay occurred before the Ld. Commissioner in filing of first appeal and the application u/r 46A of the IT Rules 1962 for admission of new/additional evidences before the Ld. Commissioner and also other relevant documents, which would be essentially required for proper and just decision of the case.

**7.3** Thus, the case is accordingly remanded to the file of the Ld. Commissioner in the aforesaid terms.

**8.** In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 18.02.2025.**

**Sd/-  
(RENU JAUHRI)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.