

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "F" Bench, Mumbai.

Before S/Shri Anikesh Banerjee (JM) & Omkareshwar Chidara (AM)

ITA No. 6342/MUM/2024 (Assessment Year : 2018-19)

Fortune Investment 51, Siddhivinayak Apartment, 3 <sup>rd</sup> Golibar Road, Santacruz East Mumbai-400 055.	Vs.	ITO Ward-22(1)(1) Piramal Chambers Lalbaug Mumbai-400 012.
PAN : AADFF6112D		
Appellant		Respondent

Assessee by	:	Shri Dharan Gandhi
Revenue by	:	Ms. Kavitha Kaushik
Date of Hearing	:	05/03/2025
Date of pronouncement	:	18/03/2025

ORDER

Per Omkareshwar Chidara (AM) :-

The following several grounds of appeal were raised by the appellant before the ITAT for the A.Y. 2018-19 :-

**1. Ex Parte Order Without Considering the Reasons for Delay:**

The learned Commissioner of Income Tax (Appeals) [CIT(A)] has erred in passing an ex parte order without considering the reasons for the delay in filing the appeal as provided in the Statement of Facts. The appellant did not receive the original Intimation Order issued under Section 143(1) dated May 31, 2019, and only became aware of the demand upon receiving a demand reminder dated April 22, 2024. Promptly thereafter, the appellant downloaded the Intimation Order, discovered the erroneous adjustment/addition to taxable income, and acted in good faith by filing a rectification application on April 29, 2024, and subsequently the appeal on May 16, 2024. Despite this bona fide explanation, the CIT(A) proceeded to dismiss the appeal, thereby violating the principles of natural justice.

**2. Non-Consideration of Bona Fide Reason for Delay:**

The learned CIT(A) erred in dismissing the appeal without adequately considering the genuine and bona fide reasons for the delay as outlined in the Statement of Facts. The delay occurred due to circumstances beyond the appellant's control, specifically the non-receipt of the original Intimation Order. Upon discovering the demand through the reminder dated April 22, 2024, the appellant acted promptly by filing the rectification application and appeal. This reasonable explanation was not adequately considered, resulting in a denial of justice.

**3. Erroneous Dismissal for Delay:**

The learned CIT(A) failed to exercise discretion judiciously in dismissing the appeal solely on the ground of delay, without appreciating that the delay was neither intentional nor due to negligence but arose due to genuine circumstances beyond the appellant's control.

**4. Incorrect Jurisdiction Under Section 143(1):**

The learned CIT(A) erred in upholding the action of the Assessing Officer (AO) in treating the long-term capital gain of Rs. 12,43,356 as business income, which is beyond the permissible adjustments under Section 143(l)(a) of the Income Tax Act, 1961. The CIT(A) failed to appreciate that the adjustment was outside the scope of jurisdiction conferred under Section 143(1) and should have been annulled.

**5. Exemption Ignored Under Section 10(38):**

The learned CIT(A) failed to consider that the appellant had claimed the long-term capital gain of Rs.12,43,356 as exempt under Section 10(38). The adjustment made by the Centralized Processing Centre (CPC), treating the same as business income, was erroneous in law and should have been deleted.

**6. Failure to Address Substantive Issues:**

The learned CIT(A) failed to address the substantive grounds of appeal regarding the incorrect adjustments made by the AO, focusing solely on procedural aspects. This has caused significant prejudice to the appellant.

**7. Request for Permission to Modify Grounds:**

The appellant requests permission to amend, alter, or withdraw any of the above grounds of appeal during the course of the hearing.

2. From the order of the first appellate authority, it is observed that the appeal of the appellant was dismissed on the ground of non-condonation of delay and the appeal order was not passed on merits. It was adjudicated by Ld. Addl. CIT(A) that the delay is 1776 days which is quite inordinate and no "sufficient cause" was demonstrated and hence the appeal was dismissed. Aggrieved by the order of Addl.CIT(A), this appeal was filed before the ITAT alongwith above grounds of appeal.

3. During the hearing proceedings before the ITAT, Ld. AR of the appellant has pleaded that the appellant has not received the order of CPC, "intimation u/s. 143(2) of the I.T. Act" and immediately after coming to know the demand, an appeal was filed before the Addl. CIT(A) and the same was

dismissed. He requested for giving an opportunity before the first appellate authority to explain the merits of the case.

4. The Ld. DR supported the orders lower authorities.

5. After hearing both sides, it is decided that the matter is remitted back to the file of Addl. CIT(A) to decide the issue on merits as Hon'ble Bombay High Court in the case of Premkumar Arjundas Luthra HUF (69 Taxman.com 407)(Bom) has held that the first appellate authority does not have power to dismiss the appeal without adjudicating the matter on merits.

6. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open Court on 18/03/2025.

Sd/-  
(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Mumbai; Dated: 18/03/2025

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

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BY ORDER,  
(Assistant Registrar)  
ITAT, Mumbai