

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “SMC”, MUMBAI  
BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 1554/MUM/2024 (A.Y: 2009-10)**

**Babulal Bachraj Bokadia**  
Room No. 19, 1<sup>st</sup> floor, Rangwala  
Building, 58, Islampura Street, Near  
Alankar Cinema, Mumbai-400 004  
**PAN: AAQPB4804K**  
**(Appellant)**

**ITO Ward 19(1)(1),**  
Mumbai, Maharashtra.  
**(Respondent)**

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Dharan Gandhi, Ld. AR</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Hemanshu Joshi, Ld. DR</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>10.01.2025</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>02.04.2025</b>

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is filed by the appellant/assessee against the order dated 09.12.2022 of Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”],



wherein the Ld. CIT(A) has confirmed the order of AO and dismissed the appeal of the assessee ex-parte.

2. The brief facts of the case are that, assessee has filed the return of income of Rs. 3,13,271/- on 21.09.2009 which was processed u/s 143(1) of the Act accepting the returned income. However, scrutiny assessment u/s 143(3) was completed on 30.11.11 wherein the total income was assessed Rs. 3,58,690/-. Thereafter an information was received from DGIT(Inv.), Mumbai regarding a scam unearthed by the Sales Tax Department regarding issue of hawala bills for accommodation entries by various parties in Mumbai. The assessee's name appeared in the list given by the Maharashtra Sales Tax Department. The assessee allegedly made purchases of Rs. 2,24,05,844/- from the parties who issued false bills without delivery of goods. The details of those parties who has issued the accommodation bills are as under:-

1	<i>Coral Trading CO</i>	<i>Rs. 22,604/-</i>
2	<i>Stelco Steel Industries</i>	<i>Rs. 2,49,998/-</i>
3	<i>Manav Impex</i>	<i>Rs. 1,14,659/-</i>
4	<i>Kushal Steel Corporation</i>	<i>Rs. 1,20,43,805/-</i>
5	<i>Anmol Industries</i>	<i>Rs. 1,03,894/-</i>
6	<i>Naman Enterprises</i>	<i>Rs. 33,216/-</i>



7	<i>Hardik metssl corporation</i>	<i>Rs. 25,46,982/-</i>
8	<i>Bhagyalaxmi Steel Industries</i>	<i>Rs. 72,90,686/-</i>
	<i>Total</i>	<i>Rs.2,24,05,844/</i>

3. Accordingly the case was reopened u/s 147 of the Act by issuing the notice u/s 148 of the Act on 12.03.14. Statutory notices u/s 142(1) and 143(2) of the Act were also issued. After considering the response, the assessment officer made addition of Rs. 2,80,730/- on account of non-genuine purchase. Penalty proceedings were also initiated.
4. Aggrieved by the assessment order, assessee preferred the appeal before the Ld. CIT (A) who dismissed the appeal ex-parte and confirmed the order of AO.
5. Therefore, aggrieved by the order of Ld. CIT(A), assessee preferred the present appeal before us and has raised the following grounds of appeal:-

*1) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in confirming the addition of Rs. 28,00,730/-which is 12.5% of the purchases.*

*2) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in negating the landmark judgment in*



*the case of Mohammed Haji bearing ITXA No. 1004 of 2016, wherein GP rate on sales has been exempted.*

*3) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred in not considering the fact that the Id. AO has only considered the non-genuineness of the purchases whereas sales made by the appellant is being accepted by the Assessing Officer.*

*4) That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.*

*5) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.*

*6) That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.*

6. We have heard Ld. AR and Ld. DR and examined the record. At the very outset, Ld. AR submitted that there is delay of 480 days in filing the appeal before the ITAT. Accordingly, an application seeking condonation of delay has been filed stating that delay has been caused as the appellant was diagnosed Cancer in the month of June 2022 and was



admitted in hospital in July 2022. Further, his wife expired on 31.08.23. It is therefore stated that this was a justified ground for condonation of delay, because the delay was inadvertent. The application is supported by the affidavit of the appellant.

7. The Ld. DR has relied upon the judgment of the Ld. CIT(A) stating that there was no sufficient cause for condonation of delay and the judgment is legally perfect.
8. We notice that nothing contrary has been brought on record by the respondents which may contradict and falsify facts alleged by the appellant in support of seeking condonation of delay. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition Vs. MST. Katiji&Ors., [1987] 167 ITR 471 (SC), dated 19.02.1987**, was pleased to hold regarding the condonation of delay as under:

*“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.*



*And such a liberal approach is adopted on principle as it is realized that:*

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
  2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.”*
9. In the facts and circumstances as discussed above and because of the law laid down by the Hon’ble Supreme Court in *Collector, Land Acquisition Vs. MST. Katiji & Ors* (supra), we are of the considered opinion that there was sufficient cause for condoning the delay. Accordingly, we condone the delay and admit the appeal for hearing.
10. On merit, it was submitted by Ld. AR that the impugned order is ex-parte and the appellant could not pursue its appeal because of death of his wife and he was also suffering from Cancer during the relevant period. The Ld. DR on the other hand stated that the appellant deliberately did not respond to the notice issued by the Ld. CIT(A) on several dates for filing reply, therefore it was submitted that the appeal is liable to be dismissed.



11. We have considered the rival submissions and examined the record.

Para 4 and 5 of the impugned order, which is extracted below would make it clear that the impugned order has been passed ex-parte:-

*4. During the course of appellate proceedings vide notices dated 13.06.2019, 19.06.2019, 08.07.2019, 21.07.2020, 24.12.2020, 29.12.2020 and 31.10.2022. The appellant was requested to file reply. However no submissions were made during the entire appellate proceedings. The appellant during the appellate proceedings did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.*

*4.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.*

*5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the AO has rightly assessed an income of Rs. 31,59,420/- under the head income on account of non-genuine purchase of amounting to Rs. 28,00,730/-. Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs.28,00,730/- is hereby confirmed.*

12. There is nothing brought on record by the revenue that the notices allegedly mentioned in para 4 of the impugned order as extracted above



were duly served or received by the assessee. Hearing of the appellant at the time of hearing of the appeal is a legal necessity as mandated by section 250(2) of the Act as under:-

*“Section 250 (2) The following shall have the right to be heard at the hearing of the appeal: -*

*a. The appellant, either in person or by an authorised representative;”*

13. It is evident from the provision that the hearing to be given is not a formality but an effective hearing is sine qua non for the purpose of upholding the principal of natural justice.

14. The reasons given by the appellant for his inability for joining the proceeding before the Ld. CIT(A), in the given facts and circumstances, makes a justified cause for not presenting their case before the Ld. CIT(A). We consider that the appellant be given one more opportunity for presenting its case before the Ld. CIT(A). The passing of impugned order ex-parte, in our opinion, has resulted into miscarriage of justice and for that reason, the impugned order is set aside. The matter is restored to the file of Ld. CIT(A) with the directions to decide the same afresh by giving effective opportunity of hearing. The appellant/assessee shall present its case before the Ld. CIT(A) within 90 days of this order.



15. In the result, appeal filed by the assessee is allowed for statistical purposes in above terms.

**Order pronounced in the open court on 02.04.2025.**

**Sd/-**  
**(PADMAVATHY S)**  
**(ACCOUNTANT MEMBER)**

Mumbai / Dated 02.04.2025  
*Dhananjay, Sr.PS*

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**

**Copy of the Order forwarded to:**

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

BY ORDER

(Asstt. Registrar)  
**ITAT, Mumbai**