

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 299/Mum/2025
(Assessment Year: 2011-12)**

Ashish Kamalakar Vaidya C/of C-304, Eastern Court, Junction of Tejpal and Parleshwar Road, Vile Parle East, Mumbai – 400057.	Vs.	ITO – 22(1)(2) Room No. 308, Pirmal Chamber, Lal Baug, Parel, Mumbai.
PAN/GIR No. AHOPV0333J		
(Applicant)		(Respondent)

Assessee by	Ms. Kinjal Bhuta, Adv
Revenue by	Shri Ram Krishn Kedia, Sr. DR

Date of Hearing	08.04.2025
Date of Pronouncement	22.04.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 05.07.2024 passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the National Faceless Appeal Centre, Delhi / CIT(A), for the A.Y 2011-12.

2. At the very outset we noticed that there is a delay of 108 days in filing the present appeal by the assessee . In this regard Ld. AR has filed an application for seeking

condonation of delay in filing the appeal on the basis of reasons mentioned in the application.

3. On the other hand Ld. DR refuted the contents contained in the application and requested for dismissal of the same.

4. After having heard the counsel for both the parties on this application for seeking condonation of delay and considering the entire factual position as explained before us and also keeping in view the principles laid down by Hon'ble Supreme Court in the case of ***Land Acquisition Collector Vs MST Katiji and others 1987 AIR 1353 Supreme Court***, wherein it has been held that where substantial justice is pitted against technicalities of non deliberate delay, then in that eventuality substantial justice is to be preferred. In our view the principle of advancing substantial justice is of prime importance. Hence considering the explanation put forth by the Assessee by justifiably and properly explaining the delay which occurred in filing the appeal and construing the expression "sufficient cause" liberally we are inclined to condone the delay in filing the appeal before us. Therefore we condone the delay and admit the appeal to be heard on merits.

5. As per the facts of the case the assessee is a non resident and did not file income tax returns for the majority of the preceding assessment years on the pretext that he did not have any income chargeable to tax in India. During the year under consideration, the assessee sold immovable property at Mumbai for a consideration of Rs. one crore and on advice deposited self assessment tax @ 20% Later on the appellant came to know regarding passing of ex-parte assessment order and penalty order and upon receipt of the assessment order, the assessee observed two apparent errors therein. Firstly, the AO had failed to grant credit for the Self-Assessment Tax paid by the assessee. Secondly, while computing the capital gains, the AO erroneously considered the entire sale consideration of Rs.1,00,00,000 as the assessee's undisclosed income. In view of the aforesaid discrepancies, the assessee filed an application under Section 154 of the Income-tax Act, 1961, seeking rectification of the said assessment order. Pursuant thereto, the AO passed a rectification order dated 30.12.2021 under Section 154 of the Act, allowing credit for the Self-Assessment Tax amounting to Rs.20,00,000 paid by the assessee for the year under consideration.

6. Further, during the course of the proceedings before the CIT(A), the assessee submitted a claim for the benefit

of indexation in respect of the cost of acquisition of the immovable property sold during the year under consideration. The computation of capital gains, incorporating the indexed cost of acquisition was duly included as part of the 'Statement of Facts' filed before the Ld. CIT(A). A detailed computation of the capital gains arising from the sale of the said immovable property is enclosed at page no.51 of the paper- book.

7 The credit of which was granted to the Assessee. However without providing opportunity of hearing Ld. CIT(A) decided the appeal filed by the assessee without granting deduction for indexed cost of acquisition while working out capital gain. Thus assessee requested that sufficient opportunity may be given and AO be directed to compute the capital gain after giving relief of deduction of indexed cost of acquisition of property as per section 48 of the Act.

8. On the other hand DR relied upon the order passed by the revenue authorities.

9. After having heard both the parties and perusal of the record and considering the undisputed facts, we find merits in the arguments of the assessee therefore bench is of the view that the ends of justice would be met only if the

issues between the parties are decided on merits after providing fair opportunity of hearing. Therefore the present appeal is restored back to the file of AO for fresh adjudication regarding claim of assessee u/s 48 of the IT act by providing opportunity of hearing to the parties. The assessee shall not seek any adjournment on frivolous grounds and remain cooperative during the course of proceedings.

10. Before parting we make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

11. In the result, the appeal filed by the assessee stands allowed for statistical purpose.

Order pronounced in the open court on 22.04.2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 22/04/2025

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai