

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JM  
AND  
SMT. RENU JAUHRI, AM**

ITA No. 4686/Mum/2024 (Assessment Year: 2010-11)  
ITA No. 4687/Mum/2024 (Assessment Year: 2009-10)  
ITA No. 4688/Mum/2024 (Assessment Year: 2011-12)  
ITA No. 4689/Mum/2024 (Assessment Year: 2012-13)  
ITA No. 4732/Mum/2024 (Assessment Year: 2011-12)

<b>Hemant Madhusudan Sheth</b> 115/117, Dr. Atma Ram Merchant Road, 3 <sup>rd</sup> Floor, Kabutar Khana, Bhuleshwar, Mumbai – 400002.	Vs.	<b>Central Circle 2(1), Mumbai,</b> <b>ACIT CC-22(1) Mumbai</b> 8 <sup>th</sup> Floor, Pratiksha Bhavan, Old CGO Annexe, Maharshee Karve Road, Mumbai – 400020.
<b>PAN/GIR No. ANOPS8607E</b>		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	None
<b>Respondent by</b>	:	Shri. Ajit Pal Singh, SR. DR.
<b>Date of Hearing</b>	:	17.04.2025
<b>Date of Pronouncement</b>	:	28.04.2025

**ORDER**

**Per Bench:**

- These are captioned appeals filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2009-10 to 2012-13.
2. As the facts are identical, we hereby pass a consolidated order by taking ITA No. 4689/Mum/2024 as a lead case.



**ITA NO. 4689/Mum/2024; (A.Y. 2012-13)**

3. The assessee has raised the following grounds of appeal:

*1. The Order passed by Learned AO is highly unjust and against the principles of natural justice.*

*2. The learned AO grossly erred in passing order U/s. 144 for following reasons*

*3. The AR of the appellant had attended on various access ion before AO and explained his case and also tried to file the various documents, but AO accepted the papers without giving acknowledgement.*

*4. A copy of Affidavit duly signed by Shri Kamlesh Jain, Chartered Accountant and Authorised Representative of the Appellant is enclosed herewith.*

*5 Copies of from Register maintained at the Income tax Office wherein particulars of various visitors visiting various officia is in the department is enclosed herewith. It is evident that Mr. Kamlesh Jain, AR of the appellant has visited on various dates.*

*6 It is highly unlike that during these visits he has not discuss ed the case with AO and had not complied with various requirements.*

*7. The time barring period for the completion of the case ends on 31.12.2019 whereas the AO Completed the order on 05.12.2019 only. It clearly indicates that learned AO never wanted to give proper opportunity to the assessee. This becomes more crucial from the fact that the file of the assessee was transferred from the ITO ward 18(1), Mumbai to the Central Circle 2, Mumbai in last week of November only.*

*8. This means within 15 days the learned AO had understood the case and made up his mind without hearing anything from the assessee about the income deemed to have escaped the assessment.*

*9. In view of above a pro per opportunity should be given to assessee to present his case properly.*

*10. Without prejudice to above it is submitted that the Learned AO while completing the assessment for earlier years i.e. for Asst. Year 2009-10, 2010-11 and 201 1-12 had completed the assessment by applying g 0.30 percent of Total Transactions value as taxable income of the assessee. However during the year under assessment, the learned AO had deviated from this principle and had added total value of transactions carried out in the same bank account as taxable income. 3.1 The Learne d AO ought to have appreciated the fact that the assessee has been declared*



*as exit provider to LTCG clients by Securities and Exchange Board of India Ltd. (SEBI) and hence earned very nominal percentage as income on entire transactions. The learned AO ought to have added as nominal Percentage of around 0.10percent of total transactions as income of the assessee.*

*11. The learned AO ought to have appreciated the fact that for running every business the businessman has to incur some expensed which are all owable under the Income tax Act, 1961, hence AO should have allowed these expanses as deductible expense while completing the assessment.*

*12 The Learned AO ought to have appreciated the fact that the assessee has given and taken transfer of funds from various parties who are also indulged in similar activities i.e. exit provider to LTCG clients as per SEBI order. The se transactions does not carry any commission income hence while arriving at taxable income the AO ought to have deducted these entries from total transaction value and then should have applied 0.10percent on balance transactions to arrive at actual commission income deemed to have earned by the appellant.*

*13 The Learned AO grossly erred in adding income U/s. 69A of the Income tax Act, 1961. The leaned AO ought to have appreciated the fact that in earlier years the income earned from the same bank accounts were treated as business income and hence this year without giving any appropriate reason the learned AO treated the same income as Income U/s. 69A of the Income tax Act, 196 1 which is highly unjust and against the principles of natural justice.*

*14. The learned AO ought to have appreciated the fact that Bank Statements are not part of books of accounts and hence cannot be formed base for making additions U/s. 69A of the Income tax Act, 1961 (CIT Vs. Bhaichand H Gandhi (1969) 71 ITR 42).”*

4. Brief facts of the case are that the assessee is an individual and had filed his return of income dated 31.03.2013, declaring total income at Rs. 2,04,470/-. The assessee’s case was reopened u/s. 147, vide notice u/s. 148 dated 31.03.2019. The learned Assessing Officer (ld. A.O. for short) passed the assessment order u/s. 144 r.w.s. 147 of the Act dated 05.11.2019 being the best judgment assessment, determining total income at Rs. 7,32,03,585/- after making an addition u/s. 69A of the Act as unexplained money.



5. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order, who vide order dated 09.02.2024, dismissed the appeal filed by the assessee, thereby upholding the addition made by the Id. AO on the ground that the assessee has failed to substantiate his claim by sufficient documentary evidences.
6. Further aggrieved, the assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).
7. Before getting into the merits of the case, it is observed that the assessee has filed the present appeal with a delay of 105 days beyond the period of limitation. These appeals were adjourned by the bench on several occasions at the request of the learned Authorised Representative (Id. AR for short) for the assessee. Pertinently, there has been a direction by the Bench on 10.12.2024, that the assessee should file an application for condoning the delay in filing the appeal along with an affidavit, where the Id. AR had given an undertaking that this would be the last adjournment that he was seeking for and if in case, the Id. AR seeks further adjournment he was ready to pay a cost of Rs. 1,00,000/-. The Bench had adjourned the case to 03.02.2025 which was the date convenient to the Id. AR. Subsequently, this appeal came up for hearing on 03.02.2025, where the Id. AR again sought for further time and the same was adjourned to 20.03.2025. It is observed that on that date Shri Hariram Sahu appeared virtually stating that he was the accountant of the assessee and had given an undertaking that he would file the letter of authority along with the application for condoning the delay in filing the appeal. The matter was adjourned to 26.03.2025, where on that date the Id. AR for the assessee sought for further adjournment. Further, the appeal came up for hearing on



16.04.2025, where the Id. AR for the assessee requested for further adjournment and the Bench had granted an adjournment on the next day i.e., on 17.04.2025. On the date of hearing, none appeared on behalf of the assessee nor was any application along with affidavit for condoning the delay in filing the appeal was filed by the assessee.

8. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record. The Id. DR vehemently opposed to condoning the delay in filing the appeal for the reason that inspite of several opportunities the assessee has not filed any application stating that there was 'Sufficient Cause' for the delay in filing the appeal. Further, the Id. DR stated that the assessee was habitually being non-compliant before the lower authorities, where the Id. AO has passed an ex parte order in all these appeals and even before the first appellate authority, the assessee has failed to furnish any documentary evidences in support of his claim. The Id. DR prayed that all these appeals be dismissed.
9. We have heard the submissions of the Id. DR and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non-compliant during the appellate proceeding as well as during the assessment proceeding.
10. Before getting into the merits of the case, it is necessary to decide the issue of condonation of delay in filing the present appeal. The assessee has failed to substantiate that there was 'Sufficient Cause' as per Section 253(5) of the I.T. Act, for the delay by way of an application which provides an opportunity to the assessee to explain to the



satisfaction of the Tribunal that there was 'Sufficient Cause' for not presenting the appeal within the statutory period specified under Sub Section 3 of Section 253 of the Act. It is observed that the assessee has not adduced any reasonable cause which prevented him from filing the appeal within the period of limitation which could be condoned only when there is compelling ground as to why there was delay in filing the present appeal. There are catena of decisions of the Hon'ble High Courts and the Hon'ble Apex Court which emphasizes that the assessee will have to prove that the delay in filing the appeal was not deliberate and that the same was beyond the control of the assessee. We are also conscious of the fact that time and again the decisions of the higher judiciary has stated that a liberal view should be taken in case of condoning the delay in furtherance of substantial justice but we are also aware of the fact that the assessee should cooperate with the proceedings before us, as well as before the lower authorities, failing which there can be no mechanical order where the delay could be condoned without any justification. This is a clear case of laches and deliberate inaction on the part of the assessee. Merely filing the appeal without proper compliance will not entitle the assessee any relief whatsoever manner may be. Notably, even the grounds of appeal filed by the assessee are the same grounds of appeal filed before the first appellate authority and we do not find any grounds where the assessee has challenged the order of the Id. CIT(A), which is evident that the assessee has filed the present appeal with a lackadaisical approach. We therefore deem it fit to dismiss the appeal in *limine* on the ground that the assessee has failed to substantiate the reason for the delay in filing the appeal before the Tribunal beyond the period of limitation inspite



of several opportunities given to the assessee and therefore, the delay in filing the appeal is hereby not condoned and hence, the appeal is liable to be dismissed. As the delay in filing the appeal is not condoned, we have not expressed any view on the merits of the case as none of the grounds has been adjudicated by us.

11. For the aforesaid reasons, the appeal filed by the assessee is dismissed in *limine*.

**ITA No. 4686/Mum/2024 (Assessment Year: 2010-11)**

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12. The findings recorded in ITA No. 4689/Mum/2024 shall apply mutatis mutandis to these appeals also.

13. In the result, all the appeals filed by the assessee are dismissed in *limine*.

*Order pronounced in the open court on 28.04.2025*

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

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

Mumbai; Dated: 28.04.2025

Karishma J. Pawar (Stenographer)

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai