

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER**  
**ITA No. 1310/MUM/2025 (AY: 2013-14)**

<b>Akshay Arun Shetty</b> Flat No. 6, 3 <sup>rd</sup> Floor, Shree CHS, Sector 3E, Kalamboli, Navi Mumbai – 410218 Maharashtra  <b>PAN. BKIPS6772A</b>	Vs	<b>ITO – 2</b> Panvel - 410206 Maharashtra.
(Appellant)		(Respondent )
Assessee Represented by	:	Shri Satyaprakash Singh
Department Represented by	:	Shri Vijay Kr. G. Subramanyam, Sr. DR
Date of Conclusion of hearing	:	24.04.2025
Date of Pronouncement of Order	:	30.04.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. The appeal by the assessee is directed against order of National Faceless Appeal Centre (NFAC) / CIT(A) dated 20.08.2024 for the A.Y. 2013-14. The assessee has raised the following grounds of appeal: -

*"1. The Learned CIT(A) has erred in dismissing the grounds of appeal w.r.t. addition of the cash deposits of Rs. 20,00,000/- as unexplained money u/s 69A.*

*2. The Appellant prays and requests the Hon'ble ITAT to restore the matter to the file of the Learned A.O. and provide a final opportunity to the Appellant for being heard.*

*3. The Learned CIT(A) erred in confirming the addition of Rs. 20,00,000/- u/s.69A of the Income-tax Act, on the ground that the Appellant had not availed the opportunities provided by the A.O.*

*4. The Learned CIT(A) erred in not considering that if Learned A.O. is the last fact finding authority, institution of appellate authorities shall not be required.*

*5. The Learned CIT(A) erred in not considering that he steps into the shoes of the Learned A.O. and if the Appellant failed compliance before Learned A.O. he*

*ought to have given an opportunity for hearing the facts before deciding the appeal filed before him.*

*6. The Learned CIT(A) erred in not considering that tax can only be recovered on income and the Learned CIT(A) was duty bound to give a reasonable opportunity for hearing to the Appellant before dismissing the appeal filed before him.*

*7. The Appellant craves leave to add and or alter the above grounds of appeal."*

2. Rival submissions of both the parties have been heard and record perused. The Learned Authorised Representative (Ld.AR) of the assessee submitted that Assessing Officer as well as Id. CIT(A) passed the order *ex-parte*. The assessment was completed under section 144 r.w.s. 147 of the Act on 23.09.2021. The Assessing Officer while passing the assessment order made addition of Rs.20,00,000/- on account of cash deposits in bank. The assessment order was passed during the severe Covid-19 Pandemic. Assessee was facing financial crunch and was unable to make the arrangement of cost of litigation which includes appeal fees and counsel fees. The actual delay in filing of appeal was of 120 days as majority of period was covered by Covid pandemic period. The Id. CIT(A) dismissed appeal without giving any specific show-cause notice. The Ld.AR submitted that assessee is really interested in pursuing the appeal on merit. Before Assessing Officer assessee could not make any submissions as the Chartered Accountant was not responding as assessee was unable to settle his past dues. The Ld.AR of the assessee prayed that delay in filing appeal before Id. CIT(A) may be condoned and matter may be restored back to the file of Id. CIT(A) or Assessing Officer for adjudication of the issue afresh. He undertakes on behalf of the assessee to be more vigilant in future.

3. On the other hand, Learned Senior Departmental Representative (Sr. DR) for the revenue submitted that there was delay of 324 days in filing the appeal before Id. CIT(A). Assessment was completed on 23.09.2021 and appeal was filed on 19.04.2023. The assessee has not shown any reasonable cause for condonation of delay. Assessee is relying on self-serving story. Sr. DR submitted that delay cannot be condoned. On merit, Sr. DR for the revenue submits that since there was no compliance of various notices issued by the lower authorities. Thus, the assessee deserves no further leniency.
4. I have considered the rival submissions of both the parties and perused the orders of the lower authorities carefully. It is an admitted fact that assessment was completed under section 144 r.w.s. 147 of the Act on 23.09.2021. The Assessing Officer made addition of Rs.20,00,000/- on account of cash deposits in bank account. Before Id. CIT(A), the assessee filed appeal belatedly. In the statement of fact filed along with Form No. 35 assessee stated that during assessment the assessee was not able to reply notice as E-Mail belongs to his professional (Chartered Accountant) who has not informed him as assessee was unable to settle his past fees. Though, I find that there is an inordinate delay yet considering the fact that assessee is now interested in pursuing his case on merit, though his past record speaks otherwise. Therefore, keeping in view of the principal of law on limitation that when technical consideration and cause of substantial justice are kept against each other, the cause of substantial justice may be preferred. The assessee was not going to be benefitted by filing appeal belatedly. Thus, delay in filing of appeal before Id CIT(A) is condoned but subject to payment of Rs.10,000/-.

Cost to be deposited with Hon'ble Bombay High Court Legal Aid and Advise Committee. Original receipt of cost to be placed in the record of this appeal.

5. Considering the fact that I have condoned the delay subject to payment of cost and further keeping in view that the lower authorities have passed the order ex-parte for the want of the reply from assessee, therefore, I deem it appropriate to restore the matter back to the file of Assessing Officer to decide the issue afresh. Needless to direct that before passing the order Assessing Officer shall allow fair and reasonable opportunity to the assessee. Assessee is also directed to be more vigilant and to make timely compliance.
6. In the result, grounds of appeal raised by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 30<sup>th</sup> April, 2025.

Sd/-/-  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

MUMBAI, DATED:30.04.2025  
*Giridhar, Sr.PS*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai