

आयकर अपीलिय अधिकरण "एस एम सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, PUNE

BEFORE Dr. MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.735/PUN/2025
निर्धारण वर्ष / Assessment Year: 2013-2014

Abdul Kabir Ibrahim Antule, Ground Floor, 51 Masjit Street, Bhendi Bazar, Near Mandvi Post Office, Mumbai-400003 Maharashtra PAN-AIQPA3438E	Vs	ITO, Ward, Panvel
Appellant		Respondent

Assessee by	:	CA Vidhi Solani
Revenue by	:	Mrs. Indira Adakil, Additional CIT
Date of hearing	:	06.05.2025
Date of pronouncement	:	15.05.2025

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER

This appeal at the instance of assessee pertaining to the A.Y. 2013-14 is directed against the order of the Ld. CIT(A)/NFAC, Delhi u/s 250 of the Income Tax Act, 1961 dated 10.06.2024 which in turn is arising out of order u/s 147 r.w.s 144 dated 10.09.2021.

2. Assessee has raised following grounds of appeal:-

1. The Hon. CIT(A) erred in dismissing the appeal, holding the same to be delayed by 177 days time, thereby being non-compliant to the provisions of section 249(2) of the 1. Tax Act 1961, not appreciating that the limitation period for filing of appeal stood extended by the order of the Hon. Supreme court in Cognizance for Extension of Limitation, 441 ITR 722 (SC) and therefore the appeal filed was well within time and there was no breach of section 249(2) of the L. T. Act, 1961 and accordingly the appeal was required to be heard and decided on merits on the basis of written submission filed on 8 January 2024. The dismissal of appeal being unjustified may kindly be overturned and appeal heard on merits.

2. The Hon. CIT(A) erred in dismissing the appeal holding the same to be filed beyond the time limit prescribed by section 249(2) of the 1. T. Act, 1961 without appreciating the facts of the case and not seeking any clarification from the appellant on the issue.

3. The Hon. CIT (A) erred in not deciding the appeal on the basis of merits of the appeal explained vide written submission dated 8 January 2024 and for this reason the order of the Hon. CIT(A) was bad-in-law and required to be set aside.

4. The Hon CIT (A) erred in upholding the assessment u/s 147 r.w.s 144 of the LT Act, 1961 without first serving on the appellant, a valid notice u/s 148 of the 1.T. Act, 1961 and therefore the order of assessment is bad in law and is required to be quashed on that account.

5. The Hon CIT (A) erred in upholding the re-opening of assessment u/s 147 of the 1. Tax Act 1961, by issue of the notice u/s 148 on 19.03.2020, which action of the Id AO being not as per law, the re-opening of assessment u/s 147 be held to be bad-in-law and the asst, order flowing therefrom, being the order u/s 143(3) r.w.s. 147 now under appeal be also held to be invalid and bad in law and may please be struck down on that count.

6. The Hon CIT (A) erred in upholding addition of Rs. 12,46,400/- made by Id AO as unexplained money u/s 69A r.w.s 115BBE of the IT Act, 1961, on account of Pen branch, not appreciating the nature of business of the appellant and that the said cash deposits were the business receipts of his proprietary catering business. The addition of Rs. 12,46,400/- was not merited by law and may therefore be kindly deleted.

7. The Hon CIT (A) erred in upholding addition Rs. 12,46,400/- made by Id AO u/s 69A of the L.T Act, 1961, not appreciating that the provisions of section 69A dealing with unexplained money are not attracted to the facts of the matter and therefore the addition is also legally incorrect and bears deletion on that account.

8. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal.

3. Registry has informed that the instant appeal is barred by limitation by 201 days. Ld. Counsel for the assessee referring to the affidavit placed at page 26 of the appeal stated that the assessee is suffering from hemiplegia due to which one side of his body suffers from paralysis. The physical movement of the assessee is severely restricted due to his illness and the assessee is under medical treatment since 18.05.2024. After hearing Ld. DR and going through the reasons stated for the delay in filing of the appeal, we are of the considered view that considering the medical condition of the assessee and that the assessee would not have been benefitted by delaying the appeal, we hereby condone the delay and admit it for adjudication and for the same we rely upon the judgement passed by Hon'ble Apex Court in the case

of Collector, Land Acquisition-vs-Mst. Katiji & Ors., 167 ITR 471 (SC).

4. Ld. Counsel for the assessee at the outset submitted that Ld. CIT(A) has dismissed the appeal of the assessee on account of delay in filing the appeal by 201 days. The said delay deserves to be condoned as the same was during the Covid-19 pandemic. A prayer has been made to restore the issue to the file of the Ld. CIT(A) for afresh adjudication. Ld. DR did not oppose the request of Ld. Counsel for the assessee.

5. We have heard rival contentions and perused the record placed before us. The assessment order in the case of assessee for the A.Y. 2013-14 was passed u/s 147 r.w.s 144 of the Act on 10.09.2021 wherein addition of Rs. 12,46,400/- was made for unexplained money u/s 69A of the Act. Normally the assessee has to file within 30 days of receiving the order however, due to Covid-19 pandemic the limitation period between 15.03.2020 to 28.02.2022 was extended by the *Hon'ble Supreme Court* in cognizance for contentions of limitation 441 ITR 722 (SC). The assessee filed the appeal before Ld. CIT(A) on 05.04.2022 and therefore the same was not barred by limitation. We find that there was no delay in filing of appeal before Ld. CIT(A) who grossly erred in dismissing the assessee's appeal on account of delay in filing the appeal. We therefore remit the issues raised before us back to the file of Ld. CIT(A) for necessary adjudication and pass a speaking order as contemplated u/s 250(6) of the Act. Needless to mention that the assessee shall be granted reasonable opportunity of hearing. Assessee is also directed to remain vigilant and not to take unnecessary adjournment unless otherwise required for reasonable cause and also to update the correct Email Id and contact details on the Income Tax portal. Effective grounds of appeal raised by the assessee are allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 13th day of May, 2025.

Sd/-

(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे/ Pune; दिनांक / Dated: 13th May, 2025.

Neeta

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.