

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

**BEFORE SHRI SAKTIJIT DEY, VP AND  
SHRI NARENDRA KUMAR BILLAIYA, AM**

ITA No. 2667/Mum/2025  
(Assessment Year: 2013-14)

Vishal Surinder Gupta 615, Marathon Max, LBS Marg, Mulund (West), Mumbai-400 080	Vs.	Dy. CIT-17(1) Room No. 232, Kautilya Bhavan, Bandra Kurla Complex, Mumbai-40 051
PAN/GIR No. AFZPG 1242 E		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Jigar Shah
<b>Respondent by</b>	:	Ms. Kavitha Kaushik

<b>Date of Hearing</b>	:	02.06.2025
<b>Date of Pronouncement</b>	:	05.06.2025

ORDER

Per Saktijit Dey, VP:

This is an appeal by the assessee against the order dated 23.09.2024 of Additional Commissioner of Income Tax (Appeals) for the assessment year (A.Y.) 2013-14.

2. Before we proceed to deal with the appeal, it may be noted that the present appeal has been filed with a delay of 138 days. The assessee has filed an application seeking condonation of delay supported by an Affidavit. It is the say of the assessee that the tax professional appointed by him to take steps in the matter did not took timely steps for filing the appeal, hence the delay.

3. Having heard the parties, we are of the view that the delay in filing the appeal was due to the reasonable cause. Hence, we are inclined to condone the delay and admit the appeal for adjudication on merits.

4. As far as the substantial ground raised by the assessee *qua* the appeal is concerned, the basic grievance of the assessee is against *ex parte* disposal of the appeal by the first appellate authority without assigning any reason.

5. We have heard the parties and perused the materials on record. Briefly stated, the assessee is a resident individual. For the assessment year under dispute, the assessee had filed his return of income on 27.09.2013, declaring total income of Rs.54,47,490/-. While completing the assessment u/s. 143(3) of the Act, the A.O. made couple of additions, aggregating to Rs.10,77,613/-, to the business income declared by the assessee.

6. Contesting these additions, the assessee preferred an appeal before the first appellate authority, alleging that the assessee did not respond to the notice of hearing and did not make any submission against the additions made, the first appellate authority dismissed the appeal.

7. Having considered rival submissions, we find, assessee's appeal has been dismissed by the first appellate authority with the following observations:

4.0 *Decision:- Keeping in view the aforesaid factual and legal position, the appeal filed by the appellant is liable to be dismissed.*

5.0 *In the result, the appeal is dismissed.*

8. Thus, it is evident, the order passed by the first appellate authority is cryptic and non-speaking. In fact, to put it simply, the first appellate authority has dismissed assessee's appeal *in limine* for non-prosecution. This, in our view, is against the statutory mandate given to the first appellate authorities. It is fairly well settled, the first appellate authority does not have the power to dismiss the appeal for non-prosecution. Since, the aforesaid decision of the first appellate authority is not in accordance with law, we are inclined to set

aside the impugned order of the first appellate authority and restore the issues back to his file for *de novo* adjudication on merits after providing due and reasonable opportunity of being heard to the assessee. Further, we direct the assessee to respond to the notice of hearing to be issued by the first appellate authority and make an effective compliance facilitating smooth disposal of the proceedings before the first appellate authority. Ground is allowed for statistical purpose.

9. In the result, the appeal is allowed for statistical purpose.

*Order pronounced in the open court on 05.06.2025*

Sd/-

(N. K. Billaiya)  
Accountant Member

Mumbai; Dated : 05.06.2025

Roshani, Sr. PS

**sCopy of the Order forwarded to :**

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

Sd/-

(Saktijit Dey)  
Vice President

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai