

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
& SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER  
ITA Nos. 1136, 1216 & 1215/MUM/2025 (AY : 2009-10 to 2011-12)  
(Physical hearing)**

Manish Narendra Shah 4, Suman Niwas, Roshan Nagar, Chandravarkar Lane, Borivali West, Mumbai-400092. E-mail: m_shah74@rediffmail.com Ph. 9892072265 [PAN No. AGVPS7034H]	Vs	ITO - 41(3)(4) Mumbai
Appellant / Assessee		Respondent / Revenue

Assessee by	Sh. Rohan Dedhia CA
Revenue by	Sh. AnnavaramKosuri, Sr. DR
Date of hearing	26.06.2025
Date of pronouncement	27.06.2025

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

**PER BENCH:**

1. These three appeals by assessee are directed against the separate orders of Id. CIT(A) for A.Y. 2009-10, 2010-11 and 2011-12. In all the three appeals, the assessee has raised certain common grounds of appeal, facts in all the three years are almost common except variation of figure of addition on account of disallowance of certain purchases, thus with the consent of parties all the appeals were clubbed, heard together and all decided by consolidated order to avoid the conflicting decision. For appreciation of facts, appeal for A.Y. 2009-10 in ITA No. 1136/Mum/2025 is treated as lead case. The assessee has raised following grounds of appeal:

*"1. The learned CIT(A) erred in not condoning the delay of 136 days in filing of appeal.*

*2. The learned CIT(A) erred in not holding the assessment as void despite the assessing officer not providing the reasons for re-opening of the assessment despite assessee asking for the same at the time of assessment and thereafter.*

*3. The learned CIT(A) erred in confirming the action of the assessing officer (AO) in framing the assessment beyond the jurisdiction and scope of the notice on which the assessment was opened.*

*4. The learned CIT(A) erred in confirming the Assessing Officer's action of making additions on account of bogus purchases without considering the facts and issues involved.*

*5. Each one of the above grounds of appeal is without prejudice to the above.*

*6. The appellant reserves the right to add, alter or amend to the above grounds of appeal."*

2. Rival submissions of both the parties have heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that assessment was completed under section 144. The assessee right from the beginning is seeking copy of certain documents and sources of information with assessing officer (AO), but no such documents are provided to the assessee. In absence of such information the assessee was unable to prepare his case and to contest it effectively. Copy of assessment was not served on the assessee, on coming to know about the passing of assessment order, the assessee applied for obtaining copy of assessment order and on receipt of assessment order, the assessee filed appeals before CIT(A). The appeal for AY 2009-10 was delayed by 136 days from the date of assessment order. The Id. CIT(A) not condone the delay and dismiss the appeal in limine. The Id. CIT(A) also dismissed the appeal in ex-parte proceeding. Neither the reasons recorded were provided to the assessee nor any other material which was

basis for issuing notice under section 148 was provided to the assessee. The lower authorities have not given fair and reasonable opportunity. Even before ITAT, the assessee has filed application for supply of certain crucial information pertaining to reopening which are essential for preparation of submission have not yet to be provided. The assessee was deprived of fair and reasonable opportunity. The Id. AR of the assessee prayed that matter may be restored back to the file of lower authorities to pass the assessment order afresh after providing all the necessary material on the basis of which assessment was reopened.

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that during the assessment, the assessing officer issued a number of show cause notices but the assessee neither responded to such notices nor attended the proceeding, the assessing officer passed assessment order under section 144. The assessee is a beneficiary of bogus purchases. The assessing officer made addition for the want of submission by assessee. Once the assessee has not appeared before assessing officer, there was not occasion to supply such document as demanded before Tribunal. The Id. Sr. DR for the revenue submits that he has called the assessment record and is ready to supply document/material as per request of Id. AR. The Id. Sr. DR for the revenue submits that since the assessee remained ex-parte and the lower authorities have not considered the facts on merit in absence of proper representation, in case the bench is of the view that assessee deserve any relief the matter may be restored back to the file of Id. CIT(A) for adjudication of the grounds of appeal raised by assessee on merit.

4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. Firstly, we are considering the contention of assessee in not condoning the delay in filing appeal before Tribunal. We find that assessment was completed on 24.03.2015. The assessee filed first appeal before the Id. CIT(A) on 07.09.2015, thus, there was a delay of 136 days in filing appeal. The Id. CIT(A) not condoned the delay in filing appeal by taking view that assessee has not furnished any supporting evidence with record to late filing of appeal. We find that before dismissing the appeal on the issue of delay, no specific show cause notice was issued to the assessee. We find that the Id. CIT(A) also gave his finding on merits of the case by referring various case laws and dismissed the appeal on merit as well in ex-parte proceeding.
5. Before us, the Id. AR of the assessee submits that delay in filing appeal is not intentional or deliberate and delay may be condoned, the assessee interested in pursuing the matter on merit. Considering the fact that substantial right of assessee are involved in the present appeal, the assessing officer has passed assessment order for three consecutive assessment order making huge additions in crores. The assessee was ex-parte in all three years. By conduct of the assessee, we find that assessee is interested in pursuing his matter on merit, therefore, considering the Principle of law that when technical consideration and cause of substantial justice are kept against each other, the cause of substantial justice may be preferred, therefore, delay in filing appeal before Id. CIT(A) is condoned. Now, advertent to merits of the case.

6. We find that lower authorities have passed ex-parte order without considering the merits of the case, therefore, we deem it appropriate to restore the matter back to the file of assessing officer to pass the assessment order afresh. The assessing officer is also directed to provide copy of material with him which was the basis of reopening. The assessee is also directed to be more vigilant in future and to make timely compliance. The assessing officer shall serve the notice on the e-mail and the telephone mentioned on Form 36 on the present appeal which we have recorded in title of this order. The assessee is also directed to be more vigilant in timely compliance of the notice of lower authorities. In the result, the appeal of the assessee is allowed for statistical purpose.
7. As recorded above, the assessee has raised similar grounds of appeal as raised in appeal for A.Y. 2009-10 which we have restored back to the assessing officer, therefore, these two appeals are restored back to the assessing officer with similar direction. In the result, these two appeals are also allowed for statistical purpose.
8. In the result, all the appeals of the assessee are allowed for statistical purpose.

Order was pronounced in the open Court on 27/06/2025.

**Sd/-**

**PRABHASH SHANKAR  
ACCOUNTANT MEMBER**

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated: 27/06/2025  
*Biswajit*

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