

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA Nos. 1920 & 1921/MUM/2025 (AY : 2011-12 & 2012-13)
(Physical hearing)

Anil Narpatlal Gandhi Room No. 11, A Wing, 1 st Floor, 28/42, Ganesh Darshan Building, Duncan Road, 2 nd Kumbharwada, Girgaon, Mumbai-400004. [PAN No. ANLPG7535L]	Vs	ITO, Ward – 19(1)(1), Mumbai Room No. 606, 6 th Floor, Piramal Chambers, Lalbaug, Mumbai – 400012.
Appellant / Assessee		Respondent / Revenue

Assessee by	Ms. Dinkle Haria, Advocate
Revenue by	Sh. Mahesh Dattatraya Londhe, Sr. DR
Date of institution of appeal	21.03.2025
Date of hearing	03.07.2025
Date of pronouncement	03.07.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of Id. CIT(A) both dated 16.01.2025 for A.Y. 2011-12 & 2012-13. In both the years, the assessee has raised certain common grounds of appeal, certain facts in both the years are common except variation of figure of addition on account of cash deposits in bank, thus, with the consent of both the parties, both the appeals were clubbed, heard together are decided by common order to avoid the conflicting decision. For appreciation of facts, facts in appeal for A.Y. 2011-12 in ITA No. No. 1920/M/2025 is treated as lead case. The assessee has raised following grounds of appeal:

1. THE ORDER IS BAD IN LAW, ILLEGAL AND WITHOUT JURISDICTION

1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income tax (Appeals), National

Faceless Appeal Centre, ['Ld. CIT (A)'] is bad in law, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.

1.2 Otherwise also, in the facts and the circumstances of the case, and law, the appellate order so framed by the Ld. CIT (A) is bad in law, illegal and void as the same is arbitrary and perverse.

2. VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

2.1 In the facts and the circumstances of the case, and in law, the appellate order so framed in bad in law and illegal, as the same is framed in breach of the principles of Natural Justice.

2.2 Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the Ld. CIT (A) erred in not granting proper, sufficient and fair opportunity of being heard to the Appellant while passing the appellate order.

3. EX-PARTE ORDER

3.1 The Ld. CIT (A) erred in passing the order ex- parte.

3.2 While doing so, the Ld. CIT (A) failed to appreciate that the non - attendance /non reply was for the reasons not attributable to the Appellant / beyond the control of the Appellant and not deliberate or intentional.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

4. THE INITIATION AND COMPLETION OF REASSESSMENT PROCEEDING IS BAD IN LAW AND ILLEGAL

4.1 The Ld. CIT (A) erred in confirming the action of the Income tax Officer Ward 19(1)(1), Mumbai [A.O.] in initiating the reassessment proceeding and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income-tax Act, 1961 ('the Act').

4.2 While doing so, the Ld. CIT (A) failed to appreciate that:

(i) The case of the Appellant did not fall within the parameters laid down by section 147 r.w.s. 148 r.w.s. 149 & 151 of the Act; and

(ii) The necessary preconditions for initiating the reassessment proceeding and completion thereof were not satisfied.

4.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment so framed is bad in law, illegal, void and without jurisdiction.

WITHOUT PREJUDICE TO THE ABOVE

5. ADDITION OF THE AMOUNT OF RS. 18,32,655/- AS ALLEGED UNEXPLAINED CASH DEPOSIT

5.1 The Ld. CIT(A) erred in confirming action of the A.O. in making addition of the amount of Rs. 18,32,655/-u/s. 68 of the Act, by treating the cash deposits in bank accounts of the Appellant as alleged unexplained cash credit.

5.2 While doing so, the Ld. CIT(A) erred in -

- (i) Basing his action only on surmises, suspicion and conjecture;
- (ii) Taking into account irrelevant and extraneous considerations; and
- (iii) Ignoring relevant material and considerations as submitted by the Appellant.

5.3 It is submitted that in the facts and the circumstances of the case, and in law, no such addition u/s. 68 of the Act was called for.

5.4 Without prejudice to the above, assuming but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. is not in accordance with the law, is arbitrary, and excessive.

6. LIBERTY

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

2. Rival submissions of both the parties have been heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee fairly submits that there is delay of 4 days in filing both the appeals. The delay in filing appeal is neither intentional nor deliberate. The assessee has filed his

detailed affidavit in explaining the delay. The impugned order passed by Id. CIT(A) on 16.01.2025 and the present appeal is filed on 31.03.2025, thus, there is a minor delay of 4 days. The delay is due to the fact that assessee could not check the status of appeal on ITBA (Income Tax Business Portal) and when the status were checked in March 2025, it was found that appeal is already disposed on 16.01.2025. The assessee immediately filed appeal before Tribunal. Thus, there is no intentional or deliberate delay. The assessee is really interested in pursuing the appeal on merit. The assessee has good case on merit and is likely to succeed on merit. The delay in filing appeal before Tribunal may be condoned.

3. The Id. AR further fairly submits that even there was a delay before Id. CIT(A) in filing appeal. While explaining facts, the Id AR of the assessee submits the assessee was not having taxable income in AY 2011-12 & 2012-13, however, for obtaining loan the assessee was advised to file return of income. Initially return filed by assessee was accepted. The assessee was not aware about the notices, if any served on the assessee. The assessee was not aware about reassessment proceedings. Thus, reassessment was completed under section 144. The assessee was not aware to such assessment order. In the month of April 2019, when the assessee visited his tax consultant Mr Ashiya and showing him various documents lying with assessee, the assessee was informed that ex-parte order is passed against the assessee. Mr. Ashiya is old aged commerce graduate and registered as income tax practitioner. Due to his personal health issue, he was unable to attend and respond the various notices, if any, any received in his office. It

seems that he was not going to his officer and was relying upon his office staff. On going to know about passing of assessment order, the assessee filed appeal before Id. CIT(A). There was delay of about 4 months in filing appeal before Id. CIT(A). The Id. CIT(A) not condoned such delay and dismiss the appeal as unadmitted. The Id. CIT(A) also upheld the addition in merit in ex-parte proceeding. The Id. AR submits that even delay before Id. CIT(A) in filing appeal was not unintentional or with mala-fide reasons but due to the fact explained. The Id. AR submits that delay may be condoned and assessee may be allowed to hear on merit. The Id. AR of the assessee submits that it is settled so far as limitation law is concerned that when technical consideration are kept against the cause of substantial justice, the cause of substantial justice may be preferred. The assessee is not going to be benefitted by filing appeal belatedly. Rather, there is always a chance that such delay may not be condoned. To support his submission, the Id AR of the assessee relied on various case laws but at the time of her submissions mainly relied on the following case laws;

- State of West Bengal Vs Administrator, Howrah Municipality (AIR 1972 SC 749),
 - Collector, Land Acquisition Vs Mst. Katiji &Ors. (1987) 167 ITR 471-SC,
 - Vedabai Alia Vaijayanatabai Baburao Patil Vs Shantaram Baburao Patil (253 ITR 798)
 - N. Balakrishnan Vs. M. Krishnamurthy (1998) (7 SCC 123)
 - Mahaveer Prasad Jain Vs. CIT (1998) (172 ITR 331 (MP)
 - Artis Tre Pvt. Ltd. Vs CBDT & Ors. (2014) (369 ITR 691 (BOM)
4. On merit, the Id. AR of the assessee submits that Id. CIT(A) in para 5 of his order as recorded about issuance of notice. In one or two occasions, the

assessee sought adjournment. The appeal of assessee was pending since May 2019 and was dismissed in January 2025. The Id. AR submits that assessee is interesting to pursuing his appeal on merit. No fair and proper opportunity was given to the assessee. The assessee may be allowed one more opportunity to contest the case on merit. The Id AR for the assessee submits that as the assessee was ex-parte in assessment proceedings, and in case the assessee will file certain evidence to substantiate the cash deposit and the Id CIT(A) may require remand report so from assessing officer, so in order to avoid such technicality of remand report the matter may be restored to assessing officer. She undertakes on behalf of the assessee to be more vigilant in future and making timely compliance.

5. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that assessee is habitual defaulter in not timely responding to the notices of lower authorities. The assessee was ex-parte before assessing officer. Submissions before Id. CIT(A) was not filed in time. The assessee has not shown any good cause for condoning such delay before CIT(A). Again, there is delay in filing appeal before Tribunal. The assessee does not deserve no leniency.
6. I have considered the rival submissions of both the parties and seen the orders of lower authorities carefully. I find that assessment was completed under section 144 on 12.12.2018. The assessee filed appeal before Id. CIT(A) on 11.05.2019. Thus, there is delay of about 4 months in filing appeal. On considering the contents of affidavit of assessee and the submission of Id. AR of the assessee, I find that there was no intentional or deliberate delay; the

assessee has shown reasonable and plausible cause for seeking condonation of delay. Thus, delay in filing appeal before Id. CIT(A) is condoned. Again, I find that there is 4 days delay in filing appeal before Tribunal. Considering the submission of Id. AR of the assessee that there is minor delay and the delay is not intentional, thus, the delay in filing appeal before Tribunal is also condoned. Now, advertent to merits of the case.

7. I find that Id. AO as well as Id. CIT(A) passed ex-parte order. Considering the submission of Id. AR of the assessee and the facts that the assessing officer as well as Id CIT(A) passed ex-parte order. The substantial rights of the assessee are involved in the appeal; thus, in my view the assessee deserve one more opportunity to contest the case on merit. Further, keeping in view that assessee was ex-parte even before assessing, therefore, keeping in view of the fact that in the event of filing any evidence, explanation or submission, the Id. CIT(A) may require remand report from assessing officer. Thus, to avoid the long term process of seeking remand report, the matter is restored to the file of assessing officer to decide all the issues afresh. Needless to direct that before passing the order afresh, the assessing officer shall allow reasonable opportunity to the assessee. The assessee is also directed to be more vigilant in future in making timely compliance. Considering the fact that I have restored the matter back to the file of assessing officer, therefore, adjudication of each and every grounds of appeal have become academic. In the result, the grounds of appeal of the assessee are allowed for statistical purpose.
8. In the result, the appeal for AY 2011-12 is allowed for statistical purpose.

ITA No. 1921/Mum/2025 for AY 2012-13

9. As recorded above, the assessee has raised similar grounds of appeal as raised in appeal for AY 2011-12, facts in the this assessment year is also similar except variation of figure of addition. Considering the fact that appeal for A.Y. 2011-12 is restored to the file of assessing officer. Hence, this appeal is also restored back to the file of assessing officer with similar direction. In the result, this grounds of appeal of assessee is also allowed for statistical purpose.

10. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order was pronounced in the open Court on 03/07/2025.

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated:03/07/2025

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