

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI SANDEEP GOSAIN, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2356/Mum/2025  
(Assessment Year :2017-18)**

Omega Infrastructures 30, 1 <sup>st</sup> Floor, Kasturi Building Popat Wadi Kalbadevi Road Mumbai – 400 002	Vs.	Dy. Commissioner of Income Tax (Central Circle)-1(4), Mumbai
<b>PAN/GIR No.AABFO6799B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ajay Singh & Shri Akash Pawar
Revenue by	Shri Virabhadra S Mahajan
<b>Date of Hearing</b>	<b>08/07/2025</b>
<b>Date of Pronouncement</b>	<b>22/07/2025</b>

**आदेश / O R D E R**

**PER SANDEEP GOSAIN (J.M):**

This appeal filed by the assessee against the order of CIT(A)-47, Mumbai dated 14/10/2024 for A.Y.2017-18 which in itself arises from the order passed by the A.O under Sec. 147 of the Income Tax Act, 1961 (for short 'Act') dated 26.07.2021.

2. The grounds raised by the assessee are as under:-

1. On facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in upholding the additions made by the Id. Ao without providing the sufficient opportunity of being heard in gross violation of principle of natural justice. In view of the facts and circumstance, the same liable to be quashed.

2. On facts and circumstances of the case and law on the subject, the learned assessing officer erred in making addition of Rs.2,40,25,000/-on account of capital introduced by partner M/s Quick Developers & Fiscal Services Limited u/s 68 of the Income Tax Act, 1961. The learned CIT(A) erred in confirming addition of Rs.2,40,25,000/-without correct appreciation of the facts of the case and law on the subject. In view of the facts and circumstances of the case and law on the subject, the addition be deleted.

3. The appellant craves leave to add, amend, alter or delete any ground of appeal on or before the date of hearing.

3. At the outset, we notice that there is a delay in filing the present appeal and in this regard, Id. AR has drawn our attention to the application, seeking condonation of delay in filing the appeal and the same is reproduced hereinbelow:-

*“The appellant has preferred an appeal before the Ld. Commissioner of Income Tax (A)-47 against assessment order dated 26/07/2021. The appellate order has been passed ex-parte on 14/10/2024 confirming the addition made in the assessment order. However, the appeal could not be filed within stipulated time and there is delay of 141 days. The appellant respectfully submits that brief facts led to the said delay in filing appeal as under.*

*The appellant is a partnership firm and is a Group company of M/s Ashtech (India) Private Limited whose turnover is more than 500 crores. The partners entrusted Mrs. Bharati Parab, Senior Accountant of Group company to track the notices and co-ordinate with professional consultant to make compliances and submissions in this respect As the partners / directors are*

*busy in day-to-day affairs of the group companies therefore for avoidance of non-compliances, responsibilities and roles have been given to employees of the group companies.*

*Further, the appellant respectfully submits before your honour that Mrs Bharati Parab, Senior Accountant was busy in compiling data and co-ordinating with auditors for statutory audit and tax audit compliances of group companies as deadline for the same was 31/10/2024 hence she failed to track the notices. Thus, no submissions have been made in instant case. The appellant was in bonafide faith and under impression that Notices were complied from time to time*

*The Appellate Order has been passed on 14/10/2024 but it is come to the knowledge of the appellant on 29/03/2025 when status of outstanding demand of Income tax of all companies had been asked by directors. Hence, the appellant has come to know about this order on 29/03/2025.*

*The appellant further respectfully submits that the appellant has always co-operated in Income Tax matters with department. The appeal has been filed against order since the appellant is confident that the case has not been decided on merits. The compliances could not be made due to oversight and not deliberate*

*The delay of 141 days has inadvertently arisen due to above reason and due to reasonable cause. Therefore, it is humbly requested that this application of condonation of delay be allowed in the interest of natural justice and equity and if, the same is not allowed cause of natural justice will suffer as balance convenience lies in favour of the appellant.*

*In view of the above, the appellant therefore humbly prays your honour to kindly condone the delay of 141 days in filing appeal and admit the appeal for AY 2017-18 in the interest of natural justice and oblige.*

4. The said application is also supported by an affidavit wherein, the reason for delay has been explicitly been explained.

5. On the other hand, ld. DR submitted that there is no sufficient cause for condoning the delay in filing the present appeal.

6. We have heard the Counsels of the parties, perused the material placed on record. After considering the entire factual position as explained before us and also keeping in view the principles laid down by the Hon'ble Supreme Court in the case of **Collector Land Acquisition, Anantnag & ANR. vs. MST. Katiji & Ors. 1987 AIR 1353 (SC)** wherein, it has been held that when substantial justice is pitted against technicalities of non-deliberate delay and in that eventuality substantial justice is to be preferred. In our view, the principles of advancing substantial justice are of prime importance. Hence, considering the explanation put forth by the assessee, which is duly supported by an affidavit wherein, the assessee is justifiable and properly explained the delay in filing the present appeal and construing the expression "sufficient cause" liberally. Accordingly, we condone the delay in filing the present appeal, consequently, the delay is condoned and appeal is registered to be heard on merits.

7. The only effective ground raised by the assessee relates to challenging the order of ld. CIT(A) in upholding the additions made by AO on account of capital introduction by partner i.e. M/s. Quick Developers and Fiscal Services Pvt. Ltd., u/s.68 of the Income Tax Act.

8. We have heard the Counsels from both the parties on the said ground and perused the material placed on record, judgments cited before us and also the orders passed by the relevant authorities. From the records we noticed that assessee is a partnership firm having partners from Mandhania family (Ashtech group) and M/s. Quick Developers & Fiscal Services Pvt. Ltd., established in 2007 carrying on the business of trading.

9. M/s. Quick Developers & Fiscal Services Pvt. Ltd., hereinafter, referred to as M/s. Quick Developers being one of the partner, brought in capital of Rs.2,40,25,000/-.

10. However, AO while passing the order of assessment, made additions of the said amount of Rs.2,40,25,000/- u/s.68 of the Income Tax Act by holding that during enquiry by Investigation Wing, it was found that M/s. Quick Developers does not exist on the registered address. Therefore, the capital introduced by the said partner was not genuine. However, on the contrary, we noticed from the record that source of capital introduction into the assessee firm by M/s. Quick Developer is the refund of the share application money from Ashtech (India) Pvt. Ltd. and the same was transferred through bank by M/s. Ashtech (India) Pvt. Ltd., in assessee's bank account.

11. We further noticed that initially the said amount was transferred by M/s. Quick Developers to M/s. Ashtech (India) Pvt. Ltd. in the year 2012 for share application money,

therefore, in the current year, the refund of the said amount to M/s. Quick Developers by way of capital introduction in assessee's firm cannot be doubted or questioned. In order to substantiate its stand, the assessee had filed the following documents:-

- a) Audited financial of Quick Developers & Fiscal Services Pvt. Ltd for AY 2017-18 (Pg no. 40-47)**
- b) by Quick Developers & Fiscal Services Pvt. Ltd Company status from ROC site (Page no. 48-49)**
- c) Assessee's Bank statement of Union Bank (Page no. 50-51)**
- d) Ledger Accounts Quick Developers & Fiscal Services Pvt. Ltd in the books of Omega Infrastructure) (Pg. 52)**
- e) Ledger Accounts Quick Developers & Fiscal Services Pvt. Ltd in the books of Ashtech) (Pg. 53-54)**
- f) Audited Financial of Ashtech Pvt Ltd. as 31/3/2012 and 31/3/2017 (Pg. 55-61)**

12. Even otherwise, the identity of the parties is established by PAN number, ITR number, balance sheet, profit and loss account and financial reports and MCA status. Moreover, all the parties are assessed to tax. Apart from that, with regard to the creditworthiness of the parties, the assessee had also submitted that the company had paid share capital, reserve and surplus and the disputed capital contribution is received through banking channels and the amounts were transferred way back in the year 2012 by M/s. Quick Developers to M/s. Ashtech (India) Pvt. Ltd., for share application money. Since

the same is not disputed therefore, in current year, the refund of the said amount to M/s. Quick Developers by way of capital introduction in assessee firms cannot be questioned.

13. Now even during the proceeding before us, a new and vital part has also been placed on record by Id. DR wherein, it was admitted by the Revenue that in the case of M/s. Ashtech India Pvt. Ltd., additions were not made on account of capital /loan introduction from M/s. Quick Developers and Fiscal Services Pvt. Ltd., in A.Y.2017-18 or prior period which goes to show that no doubt has been raised by the Revenue in the case of M/s. Quick Develop in the case of M/s. Ashtech (India) Pvt. Ltd.,

14. After having gone through the fact of the present case we found that the amount received by the assessee has already been duly reflected in the books of account maintained by the concerned partners and they had also confirmed such contribution. Therefore, addition u/s.68 made on the basis of suspicion is not maintainable. On this proposition we rely upon the decision of the Hon'ble Supreme Court in the case of **Umacharan Shaw and Bros vs. Commissioner of Income Tax (1959) 37 ITR 271** wherein, it was held that suspicion however strong may be cannot take the place of evidence. For this view reliance is placed upon the decision of the Hon'ble Supreme Court in the case of **PCIT vs. Vaishnodevi Refoils & Solves (2018)257 Taxman 440 (SC)** wherein it was held as under:-

*“Where Assessing Officer made addition to assessee-firm's income under section 68 in respect capital introduced by one partner of firm, in view of fact that amount received by assessee-firm had been duly reflected in books of account maintained by concerned partner and he had also confirmed such contribution, impugned addition was to be set aside : SLP dismissed.”*

15. Even otherwise, in our view capital introduction cannot be treated as non-genuine or bogus based on mere suspicion more so when parties have confirmed the transactions, even no cross examination was afforded of alleged parties whose statement is relied. The amount of capital introduced is duly reflected in books of Ashtech since year 2012 therefore, the same cannot be disallowed.

16. Considering the totality of the facts and circumstances and also taking into consideration, the material placed on record before us that no additions have been made in the case of M/s. Ashtech (India) Pvt. Ltd., on account of capital introduction from M/s. Quick Developers and Fiscal Services Limited for the year under consideration and also the fact that the amount received by the assessee firm has been duly reflected in the books of accounts maintained by the concerned partner and he had also confirmed such provisions therefore, we delete the additions made by the Id. AO. Consequently, this ground raised by the assessee stands allowed.

**17. In the result, appeal of the assessee is allowed.**

Order pronounced on 22<sup>nd</sup> July , 2025.

**Sd/-**

**(PRABHASH SHANKAR)  
ACCOUNTANT MEMBER**

Mumbai; Dated 22/07/2025  
KARUNA, *sr.ps*

**Sd/-**

**(SANDEEP GOSAIN)  
JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**