

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 973/Mum/2025

Assessment Year: 2020-21

Giridhari Jaisinghani 801, Morning Glory St. Andrews Road Bandra West Mumbai - 400050 [PAN: AAAPJ8473A]	Vs	Deputy Commissioner of Income Tax - (Central Circle)- 5(2), Mumbai
अपीलकर्ता/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rajan Vora & Shri Lekh Mehta, A/Rs
Revenue by :	Shri Swapnil Choudhary, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 21/07/2025

घोषणा की तारीख /Date of Pronouncement: 24/07/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. CIT(A)-53, Mumbai [hereinafter 'the CIT(A)'] dated 06/12/2024 pertaining to AY 2020-21.

2. The grievance of the assessee reads as under:-

"On the facts and in the circumstances of the case and in law:

General:

- 1. the learned CIT(A) has erred in dismissing the Appellant's appeal against order u/s 143(1) of the Act, as not maintainable, as returned income is accepted in the order under section 143(1) of the*
- 2. the learned CIT(A) ought to have considered that additional claim made before the assessing officer post passing of the intimation order under section 143(1) of the Act and since the CIT(A)'s jurisdiction is co-terminus with that of the assessing officer, ought to have adjudicated upon the additional claim;*
- 3. the learned CIT(A), failed to consider the fact that the ground of appeal on erroneous levy of interest under section 234A of the Act had been*

validly raised and therefore, the appeal ought to have been considered as maintainable;

Capital gains not chargeable to tax of Rs. 103,19,87,760:

Not admitting the Appellant's additional claim:

4. *the learned CIT(A) erred in not admitting the Appellant's additional claim in respect of non-chargeability of his capital gains income amounting to Rs. 103, 19,87,760 filed by way of a 'ground of appeal';*
5. *the learned CIT(A) failed to appreciate the fact that additional claim made by the Appellant being a legal claim, the Appellate authority ought to have admitted the same and adjudicated judiciously and on merits in the course of the Appellate Proceedings;*

Provisions of Explanation to section 55(2)(ac) of the Act as applicable at the time when the impugned OFS transactions was entered into should be applied:

6. *the learned CIT(A) failed to appreciate the fact that since, the additional claim made by the AO in respect of non-chargeability of capital gains arising on shares offered under Offer for Sale ('OFS') ought to have been allowed, as the computation mechanism in relation to determination of cost as per section 55(2)(ac) of the Act fails, by virtue of which the capital gains cannot be computed and hence there can be no levy of capital gains tax;*

Without prejudice, cost of acquisition of the shares may be computed using the fair market value as on 31 January 2018:

7. *without prejudice to the above, the learned CIT(A) ought to have considered alternate legal claim of the Appellant that the cost of shares of Polycab India Ltd offered by assessee under the OFS should be considered to be Fair Market Value ('FMV') of shares as on 31 January 2018 for the purpose of computation of capital gains;*

Without prejudice, provisions of section 55(2)(aa)(iiia) of the Act cannot be imported into the provisions of section 55(2)(ac) of the Act:

8. *without prejudice to the above, failed to appreciate that the provisions of section 55(2)(aa)(ilia) of the Act providing for cost of acquisition of bonus shares to be Nil cannot be imported into the provisions of section 55(2)(ac) of the Act and it has to be considered as per grand-fathering provisions i.e. fair market value as on 31 January 2018 should be adopted;*

Without prejudice, adjudication on the additional claim by the ITAT:

9. *the Hon'ble Tribunal ought to admit the Appellant's additional claim and adjudicate upon the following issues in relation OFS transaction:*

Provisions of Explanation to section 55(2)(ac) of the Act as applicable at the time when the impugned OFS transactions was entered into should be applied;

Amended provisions of Explanation to section 55(2)(ac) of the Act cannot be applied retrospectively;

• *Without prejudice, cost of acquisition of the shares may be computed using the fair market value as on 31 January 2018;*

• *Cost of acquisition of bonus shares cannot be considered as Nil;*

Levy of interest under section 234A of the Act - Rs. 1,30,300:

10. the learned CIT(A) erred in disposing the Appellant's grounds of appeal holding the same to be consequential in nature, without appreciating the correct computation submitted by the Appellant in rectification application filed before AO has not being considered;

Each of the above ground is independent and without prejudice to one another.

The Assessee craves leave to add, to alter, to amend or to delete any or all of the above grounds of appeal, at or prior to hearing of the appeal, so as to enable your Honour to decide the appeal according to law."

3. Briefly stated the facts of the case are that the return of income for the year under consideration was filed by the assessee on 04/12/2020. The return was processed u/s 143 (1) of the Act and the intimation was issued on 04/02/2021. Subsequent to receiving the intimation dated 04/02/2021, the assessee filed additional legal claim before the AO vide letter dated 17/07/2021. Since the said letter had no legal sanctity, the AO did not adjudicate the claim of the assessee.

3.1. The assessee preferred appeal before the Id. CIT(A) strongly contesting that the AO has not considered the legal claim filed by it vide letter dated 17/07/2021 and has not adjudicated the same on merits. It was brought to the notice of the Id. CIT(A) that in the return of income filed, the assessee has offered to tax capital gain on income from sale of shares of Polycab India Ltd. in the offer for sale (OFS) of the said company during the year. The assessee further mentioned that he has

calculated the capital gains and paid taxes thereon on a conservative basis at the rate of 10% + applicable surcharge and cess. However, the assessee is now of the view that capital gains offered to tax on the aforesaid sale of shares should be held to be non-taxable as the charging mechanism failed and the capital gains cannot be determined. Accordingly, the assessee filed additional claim before the AO vide letter dated 17/07/2021.

4. The contentions of the assessee were dismissed by the Id. CIT(A) who was of the firm belief that grounds raised by the assessee are not correct in facts and inasmuch as in the case of the assessee intimation order u/s 143(1) of the Act was issued by the AO/CPC on 04/02/2021 whereas the assessee has filed additional legal claim modifying/revising the claim made in the return of income to the AO on 17/07/2021. No such claim was filed by the assessee before passing of the intimation order u/s 143(1) of the Act. The AO/CPC has accepted the return of income filed by the assessee. Thus, there is no adjustment made by the AO/CPC in the intimation passed u/s 143 (1) of the Act and none of the grounds filed by the assessee were emanating from the order passed u/s 143(1) of the Act, the grounds by the assessee were dismissed.

5. Before us, the Id. Counsel for the assessee vehemently stated that the assessee has raised grounds challenging the levy of penalty u/s 234A of the Act in the intimation passed u/s 143(1) of the Act. It is the say of the Id. Counsel for the assessee that levy of interest u/s 234A of the Act is appealable and the Id. CIT(A) ought to have adjudicated the

same and once the ld. CIT(A) had adjudicated this legal issue, the other legal issues are also to be considered. Firm reliance was placed on the decision of the Coordinate Bench in the case of brother of the assessee in ITA No. 972/Mum/2025; AY 2020-21 order dt. 19/06/2025.

Per contra, the ld. D/R strongly supported the findings of the ld. CIT(A).

6. We have given a thoughtful consideration to the order of the authorities below. It is an undisputed fact that the claim of the assessee was made after the intimation passed by the AO/CPC on 04/02/2021 whereas the claim was made vide letter dated 17/07/2021. To this extent, we do not find any reason for the quarrel as nothing has been decided against the assessee in the intimation framed u/s 143(1) of the Act. However, levy of interest u/s 234A of the Act was challenged and in the considered opinion of this Bench, the same should have been adjudicated by the ld. CIT(A). We find that the decision of the Coordinate Bench (*supra*) is also on the same line and the relevant findings read as under:-

“19. In the present case in hand, the ld. CIT(A) has not discussed any of these issues and has merely held that the levy of interest is mandatory and consequential. There has been no discussion about the admissibility of the ground challenging the levy of interest before the first appellate authority and only when the issue of admissibility of the levy of interest as an appealable ground has been discussed, then the other grounds of appeal raised by the assessee by way of additional claim can be admitted and adjudicated. We find no discussion in the ld. CIT(A)'s order on this issue which has larger impact on the admissibility of the additional claim raised by the assessee.

20. On this observation, we find that the action of the ld. CIT(A) in not passing a speaking order on this issue is not justifiable. We therefore are of the considered opinion that all these issues are to be remanded back to the file of the ld. CIT(A) with the direction to decide the admissibility of the ground challenging the levy of interest [u/s. 234A](#) of the Act and if the same is admissible in accordance with law then

whether the assessee's Ajay Jaisinghani additional claim raised before the ld. AO could be adjudicated which the assessee could possibly not raise before the ld. AO as per the Hon'ble Supreme Court decision in the case of Goetze (India) Ltd. (supra). We direct the ld. CIT(A) to re-examine this issue in the light of the relevant case laws and to pass a speaking order after giving sufficient opportunity of hearing to the assessee and decide the issue on the merits and in accordance with law. We have not given our thoughtful consideration on any of the issues on merits. Therefore, the grounds of appeal filed by the assessee is allowed for statistical purpose."

7. Respectfully following the decision of the Coordinate Bench, we hold accordingly.

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

Order pronounced in the Court on 24th July, 2025 at Mumbai.

Sd/-

**(ANIKESH BANERJEE)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 24/07/2025

S.C.S.P.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai