

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3388/M/2025
Assessment Year: 2012-13**

Kailashnath Vishwanath Sharma B-7, Devprayag, Bhakti Mandir Road, Hari Niwas, Thane, Mumbai- 400602 PAN: AMWPS4173J	Vs.	Asstt. Commissioner of Income Tax 27(2), Mumbai ACIT -13(3)(2), Room No. 229, 2 nd floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bharat L. Gandhi
Revenue by : Shri Hemanshu Joshi, Ld. Sr. D.R.

Date of Hearing : 30.07.2025
Date of Pronouncement : 30.07.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 09.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. At the outset, it is observed that there is a delay of 500 days in filing of the instant appeal, on which the Assessee by filing an application for condonation of delay along with duly sworn affidavit and relevant medical documents, has claimed as under:

“1. I being an individual, I looked after my Income tax affairs and I am aware of the facts of the case and therefore, I have made this affidavit.

2. I am making this affidavit for filing before the Income Tax Appellate Tribunal in respect of A.Y. 2012-13 giving the reasons for delay in filing of an appeal and Condonation of delay.

3. I had received the order of CIT (A) of A.Y.2012-13 On. 11/10/2023.

4. I say that the delay was Mainly due to the illness of Wife who is senior and Suffering from Cancer, So I had to take care of my ailing wife and myself is a Senior Citizen suffering from oldage ailment and the sufficient cause stands Explain. Hereto annexed is the Medical reports of his Wife Mrs.Seema Sharma and Medical Insurance Mr. Kailashnath V Sharma.

5. Considering the above facts, there is a delay in filing of an appeal due to my illness and my wife' illness.

6. I therefore submit that delay in filing of an appeal before Income Tax Appellate Tribunal may be condoned.

7. There was no malafide intention nor was a deliberate act to delay the matter.

8. The Appellant had not in any way benefited by delaying the appeal

9. The Appellant therefore request that the delay may be condoned and appeal may be admitted whatever stated above is true and correct to the best of my knowledge and belief.”

3. The Ld. DR though refuted the claim of the Assessee, but not the medical documents.

4. Considering the reasons stated by the Assessee for condonation of delay along with duly sworn affidavit and

uncontroverted medical documents as genuine, bonafide and convincing to establish sufficient cause, we for just and proper decision of the case and substantial justice, deem it appropriate to condone the delay, thus the same is condoned.

5. Coming to the merits of the case, we observe that due to medical condition of his wife, the Assessee remained unrepresented before the Ld. Commissioner, which resulted into passing of the impugned order dated 09.10.2023, whereby the Ld. Commissioner dismissed the appeal of the Assessee in limine and consequently affirmed the addition/disallowances of Rs.1,61,30,461 & Rs.41,96,954/- respectively made on account of deemed dividend u/s 2(22)(e) and disallowance u/s 41(1) of the Act. Though we are inclined to remand the instant case to the file of the Ld. Commissioner, however, considering the peculiar facts and circumstances of the case in totality as the assessment order is also more or less ex-parte and/or not based on the relevant submissions/documents, which the Assessee failed to file completely and in proper manner, due to the medical condition of his wife, thus, being an exception case, we deem it appropriate to remand the instant case to the file of the AO for decision afresh, suffice to say by affording reasonable opportunity of being heard to the Assessee and by taking into consideration the additional evidences to be filed by the Assessee as filed before us and as directed by us .

6. Suffice to say, the Assessee shall co-operate in the assessment proceedings and file the relevant submissions/documents. We further clarify that in case of subsequent default, the Assessee shall not entitled for any leniency.

7. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.07.2025.

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. PS
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order
Dy/Asstt. Registrar, ITAT, Mumbai.