

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER&**  
**SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**  
**ITA No. 3741/MUM/2025 (AY: 2013-14)**  
*(Physical hearing)*

Rima Jayant Shah 20(4), Agarwal Bhavan, R.A.K. Road, Wadala, Mumbai – 400031. [PAN: ANRPS8737N]	Vs	ACIT, Circle 20(3), Mumbai Piramal Chambers, Mumbai – 400002.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Kapil Jain, CA
Revenue by	ShriAnnavaramKosuri, Sr. DR
Date of Institution	28.05.2025
Date of hearing	06.08.2025
Date of pronouncement	28.08.2025

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

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)/ADDL/JCIT(A)-1, Bengaluru dated 31.03.2025 for A.Y. 2013-14. The assessee has raised following grounds of appeal:

*"1. On the facts and circumstances of the case the Ld. Addl. / JCIT (A) and Ld. Assessing Officer has grossly erred in not accepting the revised computation of income filed during the course of the assessment proceedings (prior to the completion of the Assessment.)*

*2. The Ld. Addl. / JCIT (A) and Ld. A. O. failed to appreciate the fact that the Appellant is a Resident but Not Ordinary Resident and therefore, Incomes (Salary as well as Rent) which accrues or arises to Appellant outside India are not includible in the Total Income for the year.*

*3. Without prejudice to the ground no. 1, the Ld. Addl./JCIT (A) and Ld. AO erred in treating the Income earned from Property in U.S.A. as 'Income From House Property' and not as 'Income From Other Sources'.*

*4. Without prejudice to the ground no. 1, the Id. Addl./ JCIT (A) and Ld. AO grossly erred in not allowing the Mortgage interest of Rs. 5,82,573 /*

*incurred by the Appellant which is allowed as a deduction u/s 24 of the Income Tax Act.*

*5. Without prejudice to ground no. 1, 2 and 3, the Ld. Addl. / JCIT (A) and Ld. AO erred in disallowing the expenses claimed U/s 57 of the Income Tax Act incurred in relation to earning the Rental Income.*

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

The learned authorised representative (Id. AR) of the assessee submits that assessee is an Indian Citizen migrated to USA in 2006 for employment and was earning salary income. During the relevant financial year, the assessee returned back to India. During the said year, the residential status of assessee was that resident but "not ordinary resident" as per section 6(6) of the Income Tax Act (Act). The total duration of stay of assessee from 01.04.2005 to 31.03.2012 was 599 days only. Thus, during the subject assessment year, the assessee fulfilled the conditions to be qualified as resident but not an ordinary resident as per section 6(6) Act. The assessee while filing her return of income for A.Y. 2013-14 on 30.07.2013, due to ignorance and by mistake reflected her residential status as that of ordinary resident and filed return declaring total income of Rs. 33,88,760/-. Resultantly, the assessee offered her income due to mistake by considering her status of ordinary resident. On realising such mistake, the assessee before assessing officer filed revised computation of total income vide letter dated 14.03.2016. The assessee also furnished copy of her passport and calculation of period of stay in India to substantiate her stand "resident but not ordinary resident". The assessing officer not accepted the revised computation of income by taking shelter of

decision of Supreme Court in Goetz India Ltd. 284 ITR 323. The assessee earned income from house property in foreign country which was offered to tax as income from 'other source'. The assessee also incurred expenses which were claimed under section 57, however, the assessing officer disregarded such contention and treated the entire income from house property and disallowed the expenses. The Id. CIT(A) confirmed the action of assessing officer by holding that on assessee could only claim revised computation only by filing revised return within the time allowed. The Id. AR of the assessee submits that Central Board of Direct Taxes (CBDT) in its Circular No. 14 of 1955 has directed its officer not to take the advantage of ignorance of assessee about his right rather to assist the tax payer in securing relief and to take initiative for guiding the taxpayer. The Id. AR of the assessee further submits that though the assessing officer may not be entitled to admit the additional claim, however, such restriction is not applicable on the jurisdiction of appellate authorities and the Id. CIT(A) ought to have admitted the claim of revised computation of assessee. The Hon'ble Jurisdictional High Court in the case of CIT vs Pruthvi Brokers & Shareholders P Ltd. 349 ITR 336 (2012) held that appellate authorities are entitled to admit the additional claim and there is no such restriction on the power of appellate authorities. The Id. AR of the assessee submits that lower authorities may be directed to consider the revised computation of income filed by assessee.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. In the

alternative submission, the Id. Sr. DR submits that in case the revised computation of assessee is considered as admissible, in such event, the matter may be restored back to the file of Id. CIT(A) or assessing officer for verification of facts and passing the order afresh.

4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on case laws relied by lower authorities and the case law relied by Id. AR of the assessee before us. We find that assessee while filing return of income has shown income under various heads. The assessee also shown rental income from house property situated in Washington DC, USA. The assessing officer recorded that assessee has *suo moto* offered her Global income. The assessee has shown income from house property in USA under the head income from 'other sources' instead of income from house property. The assessing officer issued show cause notice vide order-sheet dated 11.03.2016 as to why such income from house property should not be treated as income from 'house property' instead of 'other source'. The assessee in response to such show cause notice vide her reply dated 14.03.2016 submitted that due to inadvertence, the assessee has shown her incorrect status. The assessee in factis not ordinary resident. The assessee made request to correct her status as not ordinary resident in place of resident and the income earned outside India should not be taxed. Such request of assessee was not accepted by assessing officer in view of the decision of Hon'ble Supreme Court in Goetz India Ltd. (supra). The assessing officer was of the view that income from house property

falls within the ambit of section 22 and to be taxed as income from house property. The assessing officer accordingly taxed the same under the head income from house property by allowing permissible deduction under section 24 of the Act. We find that on appeal before Id. CIT(A), the action of assessing officer was upheld. The action of assessing officer was upheld by Id. CIT(A) with same reasons that assessee has not filed revised return of income in time.

5. Before us, the Id. AR of the assessee vehemently argued that assessee is not an ordinary resident. The Id. AR of the assessee also furnished the working of stay in India from 01.04.2005 to 31.03.2012 as per details of page no. 14 of paper book. To support his submission, the Id. AR of the assessee also furnished the copy of passport of assessee. Copy of revised return of income is also placed on record. Considering the fact that we find merit in the submissions of Id. AR of the assessee that assessing officer may not have jurisdiction to entertain and adjudicate additional claim in absence of revised return, however, such restriction is not applicable on the jurisdiction of appellate authority as has been held by jurisdictional High Court in Pruthvi Brokers & Shareholders P Ltd. 349 ITR 336 (2012). We also find prima facie force in the submission of Id. AR of the assessee and that status of assessee as resident but not ordinary resident. Therefore, we admit the additional claim of assessee filed during the assessment proceedings and considering the fact that such fact is not verified and considered by assessing officer, therefore, matter is restored back to the file of jurisdictional assessing officer for limited purpose to

verify the period of stay of assessee from 01.04.2005 to 31.03.2012 for determination of status of assessee, as of "not ordinary resident" as per provisions of section 6(6) of Income Tax and to allow appropriate relief to the assessee in accordance with law. In the result, ground no. 1 & 2 of the appeal are allowed for statistical purpose.

6. Considering the fact that we have allowed ground no. 1 & 2, therefore, alternative ground raised by assessee have become academic.
7. In the result, the appeal of the assessee is allowed for statistical purpose.

Order was pronounced in the open Court on 28/08/2025.

**Sd/-**

**OMKARESHWAR CHIDARA  
ACCOUNTANT MEMBER**

**Sd/-**

**PAWAN SINGH  
JUDICIAL MEMBER**

MUMBAI, Dated: 28/08/2025  
*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