

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE Ms. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.3826/MUM/2025
(A.Y. 2012-13)

Mishika Kamlesh Lulla , Flat No. 1602, Harihar Building, Madhav Sankalp, Khadakpada, Kalyan - 421301, Maharashtra	v/s. बनाम	Income Tax Officer, Ward - 3(2), 2 nd Floor, Rani Mansion, Kalyan - Murbad Road, Syndicate, Kalyan - 421 301, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ACCPL3579M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sunil Talreja, AR
Respondent by :	Shri Ashok Kumar Ambastha (Sr. DR)

Date of Hearing	04.08.2025
Date of Pronouncement	21.08.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 06.12.2019 for the Assessment Year [A.Y.] 2012-13.



2. The grounds of appeal are as under:

- i. *“The Assessing Authority” failed to establish any corroborative evidence for alleged un-explained source of investment by the appellant, which in fact are duly recorded in books of accounts.*
- ii. *“The Assessing Authority” erred in disallowing the amount of un-secured loan obtained from various individuals for which supporting documents viz. bank statement of the appellant, loan confirmations duly signed depicting the PAN of the lender submitted during the course of re-assessment proceedings by the appellant.*
- iii. *“The assessing authority” followed pick and choose method in respect of unsecured loans obtained wherein, certain investment out of loan supported by loan confirmations were allowed and only 1 loan confirmation disallowed.*
- iv. *“The Assessing Authority” failed to issue u/s-133(6) for obtaining relevant information from the lender of the loan to the appellant.*
- v. *The Appeal is delayed, affidavit for condonation of delay in filing this appeal petition is enclosed separately.*

3. Brief facts of the case are that on the basis of the information that the assessee had purchased an immovable property valued at Rs. 50,00,000/- along with another co-owner but she didn't file any return of income for the relevant year. Accordingly, a notice u/s 148 of the Act for re-opening the assessment was issued on 30.03.2019 but she didn't file her return of income. Before the AO, the AR submitted that the property concerned was purchased by the assessee and her spouse jointly having the assessee's share of 50%. It had also submitted the details of source of the investment. On perusal of the details of source of investment, the AO found that a total amount of Rs. 8,50,000/- was unexplained in nature. Thus, in absence of any cogent source of investment to the tune of Rs. 8,50,000/-, the same was



disallowed and added back to its total income u/s 69 as unexplained investment.

4. In the subsequent appeal, the assessee contested the above addition made inter alia claiming that the Assessment order was passed before completing the hearings. Perusal of the appellate order reveals that he issued various notices for hearing/filing written submission but neither any adjournment letter was filed nor filed any written submissions. The notices were issued on emails as available in the ITBA Module of the Income Tax Department and duly served upon the appellant. A final show cause was also issued on 18.01.2024 but no reply was received in response to this final show cause notice. In view of these facts, the ld.CIT(A) dismissed the appeal *in limine*.

5. It is noticed that the instant appeal is delayed by 425 days. In this regard, the assessee has filed an application for condonation alongwith an affidavit submission to condone the delay and hear the appeal on merits. It is contented that only in April 2025, while her accountant was reviewing the status of pending matters on the Income Tax Return (ITR) portal, she came to know that the appeal before ld.CIT(A) had been dismissed. She immediately upon discovery she took steps to consult with legal advisors and preferred the present second appeal before ITAT. The delay in filing the appeal is neither



intentional nor due to negligence, but solely due to the genuine and bonafide reason of being unaware about the outcome of the CIT(A) proceedings. It is submitted that state that she would suffer irreparable harm and prejudice if the delay is not condoned and the appeal is not heard on merits.

6. On careful consideration of the submissions of the assessee, we are of the considered opinion that the delay in filing of the present appeal was not intentional but due to certain miscommunication. Such a bonafide mistake needs to be condoned. In this connection, reliance could be placed on the landmark decision of hon'ble Supreme Court which interalia held in **Collector, Land Acquisition v Mst. Katiji And Others- 167 ITR 471 (SC)** that *“ordinarily, a litigant does not stand to benefit by lodging an appeal late.....Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated....Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.... A litigant does not stand*



to benefit by resorting to delay. In fact, he runs serious risk.” We therefore, condone the delay.

7. We find that the appeal before the Id.CIT(A) was decided vide an ex-parte order. It is evident that the appellate order has been passed in ex parte manner mainly on account of lack of proper compliance by the assessee during appeal proceedings. Consequently, the Id.CIT(A) has not decided the appeal on merits which is contrary to the mandate of section 250(6) of the Act. A bare perusal of the provision makes it clear that the CIT(A) is bound to dispose of the appeal before him on merits. Once an appeal is preferred before him, then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as per section 250(4) of the Act. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides, Explanation to sub-section (2) of Section 251 of the Act also makes it dear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). The appellate order is therefore, deficient in this regard.



8. During the course of hearing, none attended. Since the Id. CIT(A) passed ex-parte order, we proposed that the assessee may be provided one more opportunity to advance her arguments/submissions before the lower authorities so as to provide details in connection with the merits of its case to support the contentions made in the grounds of appeal. The Id.DR agreed to this proposal. Therefore, in the light of above observations, in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the Id.CIT(A) for passing the appellate order *de novo*. In case of any failure on the part of the assessee, he would be at liberty to pass order after considering the materials on record. The assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the Id.CIT(A).

9. In the result, the appeal is allowed for **statistical purposes**.

Order pronounced in the open court on 21.08.2025.

Sd/-

KAVITHA RAJAGOPAL

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 21.08.2025

Lubhna Shaikh / Steno



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

