

IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,  
MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.3668/MUM/2025

(A.Y. 2021-22)

&

ITA No.3679/MUM/2025

(A.Y. 2022-23)

<b>Khimji Poonja Global Logistics</b> , 9, Sugar Market, PD Mello Road, Carnac Bunder, Mumbai - 400 009, Maharashtra	v/s. बनाम	Income Tax Officer, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400052, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AANFK7994A		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Anand Naik,AR
Respondent by :	Shri Hemanshu Joshi (Sr. DR)

Date of Hearing	04.08.2025
Date of Pronouncement	05.09.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The above captioned appeals have been filed by the assessee against the orders of even date as passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] pertaining to the rectification orders passed u/s. 154 of the Income-tax Act, 1961 [hereinafter referred to as “Act”]for the Assessment Years [A.Y.] 2021-22 and 2022-23. Since the issues are common and also



the fact that appeals were heard together, they are being taken up together for adjudication vide this composite order for the sake of brevity.

**ITA no.3668 and 3679/MUM/2025 (A.Y. 2021-22 and 2022-23)**

2. The grounds of both the appeals are as under:-

*I. The Learned Commissioner of Income tax (Appeals) erred in:-*

- i) Not serving the physical notice of hearing*
- ii) Not considering the reply and the supportings filed along with the appeal.*

*II. Your petitioner prays that it be held that*

- i) A notice in physical form should have been served*
- ii) The reply filed along with the supportings should have been considered.*

3. Both the above appeals involve identical issue of credit of TDS which was only partly allowed to the assessee while processing the returns of income by CPC, Bengaluru. Subsequently, the assessee filed rectification application u/s 154 of the Act claiming credit full amount of TDS claimed in the respective returns. However, the claims were still not allowed fully leading the assessee to prefer above appeals before this Bench.

4. Facts of the case are that the returns were processed u/s 143(1) of the Act accepting the return of income. However, the AO-CPC allowed less amount of TDS credits out of TDS claimed by applying Rule 37BA of Income Tax rules. Subsequently, rectification order was passed, however without allowing the TDS claim of the assessee. Against the



above said rectification orders passed, the filed appeal before the first appellate authority.

4.1. According to the appellate order, the assessee did not respond to the hearing notices issued on as many as four occasions. Therefore, the Id.CIT(A) has taken note of the Statement of Facts on record to adjudicate the appeals.

4.2 In the appeal filed, the appellant had contended that the AO-CPC disallowed the TDS credit without verifying the details submitted while filing return of Income. The Id.CIT(A) observed that as per the Form 26AS, there was mismatch in the figures of total revenue from the operations vis-a-vis turnover against which TDS was claimed. He noted that in view of the same, the AO only allowed the TDS claim on pro rata basis by applying the provisions of the section 37BA of the Act. Since the assessee did not explain the above difference before the authorities below, in the absence of any compliance during appellate proceedings for both above years, the Id.CIT(A) did not find any reason for interference in the matter and upheld the action of the AO in disallowing the claim of TDS credit.

5. From the appellate order, it appears that the appeal was dismissed by the Id.CIT(A) on account of lack of compliance by the assessee. He observed that during the course of appeal proceedings,



several notices were issued to it on different dates for submission of documents/explanation in support of grounds of appeal. However, the assessee chose to not to comply with any of the notices issued though it was obligatory on its part to co-operate and pursue the same before the appellant authority in effective and productive manner. The facts of non-compliance on the part of the assessee clearly revealed that the assessee by its repetitive non-compliance had shown complete lack of interest in pursuing the appeal. Therefore, in the absence of any reasonable, cogent and valid evidences/arguments/contentions advanced by the assessee in the instant appeal, it was dismissed.

6. From the above discussion, 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 ld.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. The appellate order is therefore, deficient in this regard.

7. During the course of hearing, the ld. AR for the assessee prayed that since the ld. CIT(A) and the AO both have passed the ex-parte



orders and the assessee was not provided adequate opportunity of being heard, it may be provided one more opportunity to advance its arguments/submissions before the lower authorities so as to provide details in connection with the merits of its case to support its contentions. The Id.DR did not object to this proposition.

8. We have heard both the parties and perused the materials available on record. In the light of above observations and 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, both the above appeals are allowed for **statistical purposes**.

Order pronounced in the open court on 05.09.2025.

Sd/-

**ANIKESH BANERJEE**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai  
दिनांक /Date 05.09.2025  
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.

