

**IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH "SMC", NAGPUR**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No. 257/NAG/2025
Assessment Year: 2015-16**

Mr. Sunil Bhaiyaji Malewar C/o. Shalini Malewar, Nr. Town Post Office, Bhandara Maharashtra-441904 PAN: ASNPM9282D	Vs.	ITO, Ward-2, Income Tax Building, Bhandara-441904.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Shikha Loya, Ld. CA
Revenue by : Shri Surjit Kumar Saha, Ld. D.R.

Date of Hearing : 27.06.2025
Date of Pronouncement : 27.06.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 03.04.2025, impugned herein, passed by the National Faceless Appeal Center (NFAC) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2015-16.

2. In this case, the Assessing Officer (AO) vide assessment order dated 25.03.23 u/s 147 r.w.s. 144 r.w.s 144-B of the Act, has made the addition of Rs.37,35,700/- being unexplained investment u/s section 69 of the Act.

3. The Assessee being aggrieved challenged the said addition by filing first appeal before the Ld. Commissioner, however of no avail,

as the Ld. Commissioner dismissed the same in limine for want of limitation/delay of two months and ten day, in filing of 1st appeal.

4. The Assessee before this Court has claimed that he is a non-resident of India (NRI) being citizen of the United States of America (USA) and regularly filed required returns as per statute as applicable in the USA and all such facts were duly mentioned in the income tax returns filed by him in India. During the assessment year under consideration, the Assessee has sold a rural agricultural land vide sale deed dated 27.6.2004 for a consideration of Rs.1,00,51,250/- and subsequently purchased a flat from Om Shivam Buildcom Pvt. Ltd. for a consideration of Rs.37,35,700/- as it clearly appears from the sale deed dated 22.06.2014 (paper book, page Nos.31-54). However, the Assessing officer treated the said amount of Rs.37,35,700/- as unexplained income u/s 69 of the Act, whereas the fact of purchase of flat is confirmed by sale deed attached which is a Government document. The Assessee in support of his claim also filed confirmation from the partners of M/s. Novel Residential Infrastructure affirming the purchase of the agricultural land mentioned by the Assessee and transferring/giving apartment No.704 as a part consideration and/or in lieu of part consideration qua agricultural land sold by the Assessee. Therefore, the Ld. Counsel for the Assessee has submitted that the addition of Rs.37,35,700/- is unsustainable.

5. This Court by giving thoughtful considerations to the peculiar facts and circumstances of the case, observed that the Assessee had challenged the aforesaid addition by filing first appeal before the Ld. Commissioner, however with a delay of about two months and ten days, on which the Assessee has stated that because the Assessee is an NRI and was not in India and therefore, was also unaware of the laws for filing of the appeal, however on realizing his

mistake and on legal advice, filed 1st appeal immediately. But the Ld. Commissioner declined to entertain the delay occurred before him in filing of appeal and ultimately dismissed the same for want of limitation and in limine.

This Court has considered the aforesaid factual aspect and is of the considered opinion that the reasons for delay mentioned by the Assessee, though are not sufficient but seems to be plausible, bonafide and unintentional and therefore this Court is inclined to condone the delay. Thus, the delay in filing the first appeal before the Ld. Commissioner, is condoned.

6. Coming to the merits of the case, as observed above, the Assessee has been able to demonstrate the amount of Rs.37,35,700/- being value of the flat purchased, adjusted from the part consideration of the agricultural land sold by the Assessee referred to above as affirmed by the partners of M/s. Novel Residential Infrastructure and thus the case is remanded to the file of the AO just for verification purposes only, with a direction to verify the said facts qua adjustment of part consideration of agricultural land with the purchase of new flat and /or settlement of the dues in lieu of payments qua agricultural land and to delete the addition of Rs.37,35,700/- accordingly.

7. In the result, the appeal of the Assessee is allowed in the above terms.

Order pronounced in the open court on 27.06.2025.

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

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Nagpur
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Nagpur.