

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

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.245/MUM/2025
(A.Y. 2010-11)

Marrim M.Shafi 803, PanchvatiPanch Marg Off Yari Road, Versova – 400061, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 24(2)(1), Income Tax Bldg., 6 th Floor, Lower Parel, Mumbai – 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AZAPS2406F		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri AshwinChhag,AR
Respondent by :	Shri AnnavaranKosuri (Sr. AR)

Date of Hearing	11.09.2025
Date of Pronouncement	13.10.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 14.11.2024 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. 147 r.w.s. 144 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 21.09.2017 for the Assessment Year [A.Y.] 2010-11.

2. The grounds of appeal are as under:-



1. *Ld.NFAC(A)* is erred to dismiss the appeal in view of S.249(3) of the Act without appreciating the submission made time to time on facts as well as on law.

2. Facts of the case are that during the relevant year, the assessee was a non-filer. The case was re-opened u/s. 147 of the Act on the basis of information available on NMS system that the assessee did not file return and cash deposits of more than Rs. 10,00,000/- was found in Savings Bank Account during the year under consideration. It is stated by the AO that the assessee did not respond to any of the notices issued under the Act, inspite of providing ample opportunities. Accordingly, the assessment order was passed u/s 144 of the Act at Rs 52.02 lakh.

3. In the subsequent appeal filed, it was noted by the *Id.CIT(A)* that the appeal was delayed by 163 days. He referred to Form no.35 wherein the assessee had stated that the assessee had created an e-mail ID at the time of registering the PAN on portal and had no knowledge to access the mail ID and modern system of communication and no physical communication was received from the department after filing the reply. The explanation was rejected by the *Id.CIT(A)* on the observation that reasons given did not amount to “sufficient cause” within the meaning of section 249 of the Act. Hence the delay was not condoned and the appeal was also dismissed *in limine*.



4. Before us, the ld.AR has contented that the assessee was not accorded any opportunity to explain the said delay by the appellate authority. Attention is drawn to the order u/s.271(1)(c) of the Act where facts on record show that the assessee was not in the country to make the compliance. Without prejudice to this, CA of the assessee Shri Dinesh Gada was suffering from several ailments and his both the kidneys were not functioning and hence, was on dialysis for thrice in a week and later expired on 16.07.2018. He was of the opinion that appeal cannot be filed without consent of the appellant.

5. 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 unavoidable and sufficient cause. Such a bonafide mistake should have been condoned. Moreover, the ld.CIT(A) is also not justified in dismissing the appeal on the ground of delay without affording any opportunity to the assessee to explain it which is against the principles of natural justice and also amounts to taking away a substantive right of the assessee. In this connection, reliance could be placed on the landmark decision of hon'ble Supreme Court which inter alia 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 setting aside the appellate order.

6. As regards merits of the case, the AR made a request to remand the entire matter to the file of the AO for necessary compliance and proper consideration of its submissions and supporting evidences. The Id.DR however, objected to such request stating that the assessee has not cited any cogent reason for non-compliance before both the authorities below.

7. We have duly perused the records from which it is noticed that in this case, the assessment order as also the appellate order were passed without proper adjudication on merits of the case as the assessee did not submit relevant documents and evidences in support of the issues involved before both the authorities. We are of the considered view that the entire matter needs proper consideration by the AO. As such, we are granting a final opportunity to the assessee to advance his arguments/submissions before the him so as to provide details in connection with the merits of the case and additional evidences, if any



to support his contentions. Accordingly, in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the AO for passing the assessment order *de novo* after allowing adequate opportunity of hearing to the assessee.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by him independently and in accordance with law.

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

Order pronounced in the open court on 13/10/2025.

Sd/-

SANDEEP GOSAIN

(न्यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.10.2025

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.

