

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.5040/MUM/2025
(A.Y. 2011-12)

Saroj Vilas Gandhi (Through <i>Bina Arun Shah, the Legal Heir of Deceased</i>) 601/211, 6 th Floor, Satyam Building, Opp. Odeon Swimming Pool, RN Narkar Marg, Ghatkopar East, Mumbai-400075, Maharashtra	v/s. बनाम	Income Tax Officer Ward-22(3)(2), Piramal Chambers, Lalbaug Parel, Mumbai - 400012, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPG8877C		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Shekhar Patwardhan, AR
Respondent by :	Shri Lyaqat Ali Aafaqui, (Sr. AR)

Date of Hearing	29.09.2025
Date of Pronouncement	03.11.2025

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. 147 r.w.s. 144 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 24.12.2018 for the Assessment Year [A.Y.] 2011-12.



2. The grounds of appeal are as under:

1. *The learned CIT (Appeals) National Faceless Appeal Centre has erred in confirming the addition made by the learned assessing officer treating the fixed deposits with various banks to the tune of Rs.1,06,35,521/- as unexplained cash credits when in fact the said fixed deposits were received by the appellant as the legal heir of her deceased husband.*

3. At the outset, it was noticed that the instant appeal is substantially delayed. In this regard, an affidavit alongwith an application for condonation of delay has been submitted by the legal heir Ms. Bina Arun Shah who submitted that the assessment u/s 144 r.w.s. 147 was completed in the case of the assessee Late Smt. Saroj Vilas Gandhi, mother of the deponent on 24thDecember 2018. This order was contested against by the assessee and the Id.CIT(A) appeals passed his order u/s 250 of the Act, on 1stSeptember 2023 confirming the addition made in the assessment order to the tune of Rs. 1,06,35,521/-. By the time the appellate order was passed, the assessee had expired on 29th August 2022 .It is submitted that the L/H came to know about the appeal order only around May 2024 when she approached bank for mother's death claims. Subsequent follow of all the relevant materials from banks etc. so as to file the instant appeal, consumed sufficient time as both her parents were no more. After sustained efforts to locate their respective income tax files which had bearing on the present appeal and



the matter being quite old, the appeal could be filed after delay of 650 days. This delay is also caused due to the delays on the Banks part to issue the required certificates.

3.1 Considering the circumstance and chronology of events occurred, it is a requested to condone the delay and thereby give the opportunity to get the natural justice since this is a very genuine matter of delay due to circumstances which were beyond her control.

4. 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 unavoidable reasons arising from the death of the assessee in the course of appeal proceedings. The L/H came to know of the appeal proceedings much later and the appeal got delayed due to follow up actions. Rejection of the request for condonation may cause genuine hardship to 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.” Accordingly, in the interest of justice, we condone the delay and proceed to adjudicate the grounds of appeal filed by the assessee.

5. Brief facts of the case as per the assessment order are that the assessee did not file return though the department had information that the assessee was maintaining time deposit of Rs 10635521/-with Bank of Baroda and was also deriving income from LIC commission and bank interest. Action u/s 148 of the Act and subsequent notice u/s 142(1) of the Act were not responded leading to framing of ex parte assessment. Subsequent appeal before the Id.CIT(A) was dismissed upholding the additions made by the AO.

6. The Id.DR relied on the orders of the authorities below while the AR has requested to sent the entire issue back to the file of the AO



for de novo consideration and has also assured full compliance before him.

7. We find that the appellate order has also been passed in ex-parte manner on account of non-compliance by the assessee and none of the issues raised in the grounds of appeal involved have been adjudicated. Consequently, the Id.CIT(A) could not evaluate the points of consideration so as to give his own decision on objective analysis of all relevant facts and circumstances of the case.

8. Considering the entirety of the facts and the circumstances of the case and in the interest of principles of natural justice and fair play, we consider it appropriate to send the entire matter back to the file of the AO in the light of above discussion, granting one final opportunity to the assessee to advance the arguments and submissions before him so as to provide details in connection with the merits of the case. Accordingly, in the substantial interest of justice, we set aside the appellate order and restore the entire matter back to the Id.AO for passing the assessment order *de novo* after allowing adequate opportunity of hearing to the representatives of the assessee who is also directed to attend the assessment proceedings before the AO without fail and cooperate with him in furnishing relevant details etc as sought by him.



9. In the result, the grounds of appeal and the appeal filed by the assessee are **allowed for statistical purposes.**

Order pronounced in the open court on 03/11/2025.

Sd/-

NARENDER KUMAR CHOUDHRY

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai
दिनांक /Date 03.11.2025
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.

