

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.5032/M/2025  
Assessment Year: 2017-18**

<b>M/s. Lootcart.com,</b> Shop no.29, 3 <sup>rd</sup> Floor, Hi-Life Mall, P M Road, Santacruz (W), Mumbai – 400 054 <b>PAN: AAFFL5361E</b>	Vs.	<b>Income Tax Officer</b> Ward 22(2)(3), R.No.311, 3 <sup>rd</sup> Floor, Piramal Chamber, Lal Baug, Parel Mumbai – 400 012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri V.D. Parmar, Ld. A.R.  
Revenue by : Shri Pushkaraj Bhangapatil, Ld. Sr. D.R.

Date of Hearing : 13.11.2025  
Date of Pronouncement : 13.11.2025

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 07.11.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2017-18.

**2.** At the outset, it is observed that there is a delay of 222 days in filing the instant appeal, on which the Assessee by filing duly sworn affidavit has demonstrated the peculiar facts for condonation of delay, which read as under:

*“That your-good selves are empowered under section 253(5) of the Act to Condon the delay in filing appeal. It is hereby humbly requested to kindly*

*consider company's present petition sympathetically and condone the delay in filing appeal and admit the same."*

Though the Ld. CIT DR refuted the claim of the Assessee qua condonation of delay, however, at last submitted that if the delay is condoned then the same should be on heavy cost.

**3.** On the contrary, the Ld. Counsel prayed for mercy/leniency. Considering the reasons stated by the Assessee by filing duly sworn affidavit as genuine, bonafide, unintentional and plausible, this Court is inclined to condone the delay, however, subject to deposit of Rs. 5,500/- in the Revenue Department under "other heads" within 30 days from the date of order.

**4.** Coming to the merits of the case it is observed that admittedly, the Ld. Commissioner failed to decide the appeal filed by the Assessee against the assessment order dated 06.12.2019 u/s 144 of the Act on merit and dismissed the same in limine for non-prosecution, which is not permissible in view of the judgment of the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. Premkumar Arjundas (HUF) ITA No.2336 of 2013 dated 25.04.2016 (2017) 297 CTR (Bom.) 614, wherein it has been held *"that it is not open to the LCIT(A) to dismiss the appeal on account of non-prosecution. Further las does not empower to the CIT(A) to dismiss the appeal for non-prosecution as if evident from the provisions of the Act"* and thus this Court is inclined to set aside the impugned order and remand the instant case to the file of the Ld. Commissioner for decision on merit.

**5.** At this stage, the Ld. Counsel for the Assessee has also raised a legal ground challenging the service of notice /s 142(1) of the Act {page No.1 to 3 in the paper book}. As the Assessee has raised

the legal ground, which goes to the root of the case and emanates from the material already available on record, thus, in view of judgment in **National Thermal Power Company Ltd. Vs. CIT (1998) 97 taxmann.com 358**, the Assessee is allowed to raise the additional legal ground.

**6.** As this Court is inclined to remand the instant case to the file of the Ld. Commissioner and therefore granting liberty to the Assessee to raise legal grounds including the present one on the basis of material already available on record but not otherwise, thus the case is remanded to the Ld. Commissioner for decision afresh on merit as well as the adjudication of the additional legal grounds raised by the Assessee.

**7.** Thus, the appeal filed by the Assessee is allowed for statistical purposes.

**Order pronounced in the open court on 13.11.2025.**

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

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.