

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “K (SMC)”, MUMBAI
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 917/MUM/2025 (A.Y: 2012-13)**

Vikram Babulal Shah 3 rd Floor, R. No. 73, Shreenathji Bldg, Gulalwadi 142, Kika Street, Maharashtra-400 004 PAN: CDOPS4473E (Appellant)	Vs.	ITO Assessment Unit IT Department Piramal Chambers Mumbai- 400 012 (Respondent)
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Assessee Represented by	:	Shri Vikram Babulal Shah, Ld. AR
Department Represented by	:	Shri Bhagirath Ramawat, Sr. DR.
Date of conclusion of Hearing	:	17.11.2025
Date of Pronouncement	:	28.11.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 16.08.2024 of National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y.



2012-13, wherein addition of Rs. 35,74,380/- made by the AO u/s 69A of the Act as unexplained money was confirmed.

2. The brief facts as culled out from the proceedings of authorities below are that the assessee filed the return of income for A.Y. 2012-13 u/s. 139(1) of the Act. As per information available with the department, the assessee had cash deposit of Rs. 40,36,930/- in bank account during the F.Y. 2011-12 relevant to A.Y. 2012-13. Subsequently, the case of the assessee was re-opened u/s 147 of the Act and assessee filed ITR in response to notice under u/s 148 of the Act on 23.11.2019 declaring income at Rs. 1,35,948/-. Further, the assessment was completed u/s 144/147 of the Act after making addition of Rs. 40,36,930/- on account of cash deposit u/s 68 of the Act.
3. Aggrieved by the order of AO, the assessee filed the appeal before the Ld. CIT(A) who has dismissed the appeal of the assessee vide order dated 22.03.2022. Thereafter, the assessee filed appeal before Ld. ITAT which has allowed the appeal of the assessee for statistical purpose vide order dated 01.11.2022 and remanded back the case to the file of the AO for de nova adjudication. Further, the notices u/s 142(1) along with questionnaire dated 20.12.2023 and 27.12.2023 were issued and served



upon the assessee through ITBA portal. In compliance to the above statutory notices the assessee has requested for adjournment and the assessee has been granted adjournment on 4 occasions. Further, the assessee has replied through e-assessment proceedings facility on 23.02.2024 and also a show notice was issued to the assessee for compliance on or before 08.02.2024. In response to the show cause notice, the assessee requested for adjournment in the case which has been duly granted up to 21.02.2024. In response, reply was filed on 19.02.2024 which was considered but not found tenable because the assessee has not filed any supporting document to justify the source of cash deposit during the year under consideration. Thus, in absence of the documentary evidences, the source of cash deposit of Rs. 35,74,380/- remained unexplained, hence, the same is treated as the income of the assessee from undisclosed sources u/s 69A of the Act and the addition of Rs. 35,74,380/- was made.

4. On appeal, the Ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee could not prove existence of any business to substantiate his claim that cash deposits were out of trading of readymade garments and could not prove any nexus between the cash



deposits and cash withdrawals. Therefore, the benefit of peak credit or set-off of cash deposits against cash withdrawals cannot be granted.

5. Aggrieved by the impugned order, the assessee is in appeal before us and has raised the following grounds of appeal:-

“1. The Learned Assessing Officer erred in adding to the Income of your petitioner an amount of Rs.35,74,380/-u/s 69A as unexplained cash deposit although all details called for were furnished.

2. Your Petitioner states that the Return of Income as file in ITR-4 declaring a taxable income of Rs.1,35,948/- clearly indicating that the books of accounts were not maintained and hence being covered under the provisions of section 44AD/AF of the Act.

3. The learned Assessing Officer also did not consider the taxable income as offered at Rs.2,51,138/- after preparing books of accounts on the basis of details available.

4. The learned Assessing Officer erred in considering only the cash deposits and not the cash withdrawals while completing the assessment.

5. Reliance is placed on the following 2 case laws: a) 430ITR253 PCIT vs Shitlaben Saurabh Vora b) 2024 38 NYPTTJ1539 Kailashnath Arunkumar Dube vs ITO

6. Your Petitioner humbly states with due respects that while section 147 grants significant powers, the judicious and fair application of these powers is paramount to maintain a delicate balance between the interest of the revenue and the rights of taxpayers and uphold the principle of justice and equity in taxation.



7. Your Petitioner has offered 6.62% of the sales turnover for taxation as against the stipulated 5% as per the section.

8. Your Petitioner states that 12 long years have passed after the actual transaction and hence the purchase bills and sales bills could not be produced for submission.

9. Your Petitioner prays that the addition of Rs.35,74,380/- made to the income u/s 69A be deleted.

10. Your Petitioner craves leave to add, alter, amend and/or withdraw any/all the above Grounds of Appeal.”

6. It is brought to our notice that there is delay of 102 days in filing the appeal before the Tribunal. In this regard, an application for condonation of delay has been filed by the appellant/assessee stating that statistically there is delay of 102 days and narrated the reasons for filing the appeal after the due date. The affidavit of the assessee therein contending the reasons for delay in filing the appeal is extracted below:-

“1. I, the above named deponent is fully conversant of the facts deposed below:
2. That the deponent received assessment order on 16.08.2024.
3. That appeal was to be filed by 15.10.2024.
4. The deponent had traveled to his native place to attend a family function and was therefore unavailable in Mumbai. Upon his return, he intended to approach his Chartered Accountant regarding this matter. However, due to his mother's ill health and ongoing medical treatment (medical certificate annexed), he was unable to provide timely instructions to his Chartered Accountant.



5. That the deponent filed the appeal on 10.02.2025.

6. At the outset, the Applicant respectfully submits that, in view of the aforementioned circumstances and the facts of the case, it is just, fair, and necessary in the interest of justice to condone the delay of 102 days. Accordingly, an application under Section 5 of the Limitation Act has been filed along with the memorandum of appeal.

7. That delay in filing the appeal is because of illness of the deponent mother for which deponent cannot be held responsible.”

7. The assessee also put reliance upon the judgment of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition Vs. MST. Katiji & Ors.*, [1987] 167 ITR 471 (SC), dated 19.02.1987, the Hon'ble Apex Court was pleased to hold regarding the condonation of delay as under:

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits”. The expression “sufficient cause” employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making of justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that:

1. *Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when*



delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.”

8. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. Ld. AR argued that the reasons given in affidavit seeking condonation of delay, makes out sufficient cause for condonation of delay.
9. The Ld. DR supported the judgment of the Ld. CIT(A) and argued that appellant has failed to show sufficient cause for condonation of so much delay.
10. We have considered the arguments and examined the record. Since the assessee has filed affidavit in support of condonation of delay and no contradictory facts has been brought on record by the revenue to the effect that contents of the affidavit are false. For these reasons, we find it expedient in the interest of justice that the assessee has shown sufficient cause for condonation of delay in filing the appeal before us. Hence, the delay in filing the appeal is accordingly condoned.
11. On merit of the appeal, we have heard Ld. AR and Ld. DR and examined the record. At the outset, Ld. AR submitted that assessee has already filed an affidavit alongwith 3 more affidavit of the persons to whom the



assessee sold the textile cloth and material in cash and all the details including names, location, contact number and visiting cards of the 7 persons to whom the assessee has supplied the material is also filed. In support of his arguments, Ld. AR submitted that the cash amount was deposited in the bank account which was received on account of selling of the clothing material to those persons. It is therefore submitted that the matter be remanded back to the file of AO for deciding de novo.

12.Ld. DR on the other hand submitted that it is the second round of litigation and earlier the Hon'ble ITAT has remanded the case to the file of AO and the assessee has miserably failed to prove the documents that the assessee has earned the amount from clothing business which was allegedly deposited in bank account. Therefore, Ld. DR submitted that assessee in the given circumstances and because of his conduct, is not entitled to further opportunities to prove his business income allegedly deposited in his bank account which has been considered as unexplained money.

13.We have considered the rival submissions and examined the record. We have noticed that assessee has given the details of 7 parties in his affidavit and has filed the affidavit of 3 more persons in support of his



contentions that the assessee has supplied clothing material to them and has earned money which was deposited. Nothing has been brought on record by the revenue to show that the contents of the affidavit of assessee are false and fabricated and nothing has been brought to our notice by the revenue that the affidavit of 3 persons filed by the assessee were false wherein the assessee has given the details of the materials supplied to those persons found mentioned in the affidavit. We should not be oblivious of the fact, even after the expiry of 14-15 years, the assessee has tried his best to bring the material on record to show that the alleged amount was earned through business of supply of clothing material. Further the assessee is trying his best to produce those persons before the Ld. AO as witness in support of its claim on account of alleged deposit from clothing business from those persons. In these circumstances, we are of the considered opinion that assessee should be given on more opportunity to prove the authenticity of its claim regarding the amount earned from the clothing business and specifically in view of the affidavit filed by the assessee.

14. From the above discussion, we are of the considered opinion that the matter be remitted to the file of AO for deciding the same as de novo



after verifying the details of affidavit and giving the effective opportunities to the assessee for producing the necessary documents /witnesses in support his claim regarding the amount so earned from clothing business. The assessee is also directed to submit all the details and take all necessary steps regarding his claim within 90 days from this order. The impugned order is accordingly set aside and appeal filed by the assessee is allowed in above terms.

- 15.** In the result, the appeal filed by the assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 28.11.2025

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)

Mumbai / Dated 28.11.2025
Dhananjay (Sr. PS)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//



ITA No. 917/Mum/2025
Vikram Babulal Shah

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai