

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

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.5703/MUM/2025
(Assessment Year:2023-2024)**

Kashaf Batatawala

501, Shree Krishna Enclave,
Jaybharat Society, Khar – West,
Mumbai - 400052. Maharashtra.
[PAN:ASTPB4236C]

..... **Appellant**
Vs

Income Tax Officer 23(2)(1)

Piramal Chamber, Lalbag,
Mumbai – 400013. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vishwas Mehendale

For the Respondent/Department : Shri Hemanshu Joshi

Date

Conclusion of hearing : 11.11.2025

Pronouncement of order : 16.12.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 15/07/2025, passed by the Additional / Joint Commissioner of Income Tax (Appeals), Gwalior [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal against the Rectification Order, dated 23/08/2024, passed under Section 154 of the Income Tax Act, 1961 for the Assessment Year 2023-2024.
2. The Assessee has raised following grounds of appeal :
 - "1. *On the Facts and Circumstances of the Act and in Law Hon'ble NFAC has erred in passing an ex-parte order without deciding the merits of the case as stated in the Statement of Facts.*

2. *On the Facts and Circumstances of the case and in law, Hon'ble NFAC erred in overlooking the fact that the Intimation dated 04-03-2024 had accepted the validity of appellant's claim for a Relief against the Tax Credit available u/s.90 of the Act and was authenticated vide Annexures FSI and TR of the said intimation.*
3. *On the Facts and Circumstances of the case and in law, Hon. NFAC erred in overlooking the facts that the CPC had not given any reason for not including the Relief u/s.90 of the Act, which was repeatedly rejected in the Rectification Orders u/s.154 dated 30-05-2024 and 23-08-2024."*
3. We have heard both the sides and have perused the material on record.
4. We find that the Learned CIT(A) dismissed the appeal filed by the Assessee, against the Rectification Order, dated 23/08/2024, passed under Section 154 of the Act for the Assessment Year 2023-2024 on the ground of non-compliance holding that the Assessee was not interested in pursuing this appeal. We note that during the course of hearing the Learned Authorized Representative for the Assessee appearing before us submitted that the Learned CIT(A) has dismissed the appeal without examining merits. It was submitted that the Learned CIT(A) had failed to take into consideration facts as disclosed in the statement of facts accompanying Memorandum of Appeal in Form 35 filed before the Learned CIT(A) as well the material forming part of the record. Referring to the affidavit sworn by the Assessee filed before us, the Learned Authorized Representative submitted that non-appearance before the Learned CIT(A) Assessee was not deliberate. The Learned Authorized Representative for the Assessee sought another opportunity to make out a case for granting foreign tax credit before the Learned CIT(A).
5. Per contra, the Learned Departmental Representative supported the order passed by Learned CIT(A) and submitted that despite sufficient opportunity having been granted, the Assessee had failed to respond

to various notice of hearing issued by Learned CIT(A). Therefore, the Learned CIT(A) had no option but to dismiss the appeal.

6. We have given thoughtful considerations to the rival submissions. On perusal of material on record, we find that Learned CIT(A) had dismissed the appeal preferred by the Assessee on the ground of non-prosecution without adjudicating the issue on merits. Whereas, irrespective of the non-appearance of the Assessee before the Learned CIT(A), the Learned CIT(A) was required to deal with the issue raised by the Assessee on merits in view of the provisions contained in Section 250(6) of the Act. [*CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bombay) 25/04/2016*].
7. Given the facts and circumstances of the present case as narrated hereinabove, we set-aside the impugned order, dated 15/07/2025, passed by the Learned CIT(A) dismissing the appeal and restore the appeal to the file of the Learned CIT(A) with the directions to decide the appeal on merits as per law after granting the Assessee a reasonable opportunity of being heard. The Assessee has directed to co-operate in the appellate proceedings before the Learned CIT(A) and not to seek unnecessary adjournments. Further, the Assessee is also directed to file all the relevant submissions/documents/details on which the Assessee wishes to place reliance before the Learned CIT(A) forthwith on receiving notice of hearing. The Assessee is directed to track the appellate proceedings through Income Tax Business Application (ITBA) Portal. It is clarified that in case the Assessee fails to enter appearance or file relevant documents/details/submission, the Learned CIT(A) would be at liberty to adjudicate the appeal on merits on the basis of material on record.
8. In terms of the aforesaid, the Ground No. 1 raised by the Assessee is allowed for statistical purposes while Ground No. 2 & 3 are dismissed

as having been rendered infructuous at this stage.

9. In result, the present appeal preferred by the Assessee is treated as allowed for statistical purpose.

Order pronounced on 16.12.2025.

Sd/-
(Prabhash Shankar)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.12.2025
Milan, LDC

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai