

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.5083/M/2025
Assessment Year: 2017-18**

Balkrishna Pandurang Patil, Balkrishna Sadan, Shree Bhavdev, Opp. Kander Pada Road, Dahisar East, Mumbai – 400068. PAN – CDJPP5840B	Vs.	Ward No. 10 (3) (1), Room No. 621, Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400020.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashwin Chhag, Ld. A.R.
Revenue by : Shri Praveen K. Srivastav, SR. D.R.

Date of Hearing : 20.11.2025
Date of Pronouncement : 12.01.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 21.06.2025, impugned herein, passed by the National Faceless Appeal Centre (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. In this case, the AO on receiving an information from the office of DIT (I&CI), Mumbai to the effect "*that the Assessee has sold a property showing the sale consideration of Rs.32,00,000/- whereas the stamp duty value as per Sub-Registrar is of Rs.1,75,71,000/-, which shows that sale consideration shown by the Assessee is less than the stamp duty value,*", observed that the difference of **Rs.1,43,71,000/-** is taxable in the hands of the Assessee, as per the provisions of Section 50(c) of the Act and since the Assessee has not file ROI for the assessment year under consideration, the above transaction could not be verified.

3. The AO thus, on the basis of the aforesaid information, reopened the case of the Assessee under Section 147 of the Act by issuing initial notice dated 26.06.2021 under Section 148 of the Act.

4. Subsequently, in view of the judgment of the Hon'ble Apex Court in the case of *Union of India vs. Ashish Agrawal* dated 04.03.2022 and instruction no. 01/2022 dated 11.05.2022 issued by the CBDT, such notice dated 26.06.2021 under Section 148 of the Act, was deemed to has been issued under Section 149 (A) of the Act, as substituted by the Finance Act, 2021. The AO thus treated the said notice dated **26.06.2021** u/s/ 148 of the Act, as show cause notice in terms of Section 148 (A) (b) and after providing necessary information and documents to the Assessee and a reasonable opportunity of being heard to the Assessee, passed the order 26.07.2022 u/s 148 (2) (A) (d) accordingly.

5. Re-assessment proceedings ultimately resulted into making the addition of **Rs.45,72,950/-** being 1/3rd of the differential amount of **Rs.1,75,71,000/-**, as the Assessee was having 1/3rd share/ownership in the property under consideration.

6. The Assessee being aggrieved challenged the said addition by filing first appeal before the Ld. Commissioner, who though issued various notices to the Assessee, however the Assessee except seeking adjournment on one occasion, eventually made no compliance and/or filed no submissions and documents and therefore, in the constrained facts and circumstances, the Ld. Commissioner decided the appeal of the Assessee as ex-parte and ultimately dismissed the same in limine for non-prosecution but not on merits of the case and therefore, the impugned order is liable to be set aside, specifically 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 it does not empower to the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act”*.

7. Thus, this Court deem it appropriate to set aside the impugned order and remand the case to the file of the Ld. Commissioner for decision on merit, suffice to say by affording reasonable opportunity of being heard to the Assessee.

8. This Court also deem it appropriate to direct the Assessee to comply with the notices to be issued by the Ld. Commissioner and shall file the relevant submissions and documents, which would be essentially required for just and proper decision of the case.

9. This Court also clarify that the Assessee before the Ld. Commissioner, would be at liberty to raise the legal grounds in addition to already raised qua legal and merits aspects, in the 1st appellate proceedings.

10. Thus, the case is accordingly remanded to the file of the Ld. Commissioner for decision on merit, in the aforesaid terms.

11. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 12.01.2026.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Tarun Kushwaha
Sr. Private Secretary.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.