

आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 7149/Mum/2025
(Assessment Year: 2019-20)

Jagram Tegiram Yadav, Shop No. 3/2, Sabera Begum Estate, Kherani Road, Sakinaka, Mumbai-400072. PAN: AAAPY5461D	Vs.	ITO, Ward-41(1)(2), Kautilya Bhavan, BKC, Mumbai-400051.
Assessee -अपीलार्थी / Appellant	:	Revenue - प्रत्यर्थी / Respondent

Assessee by : Shri Viraj Bhayani & Shri Nirav
Shah, AR

Revenue by : Shri Nagnath Bhimrao Pasale,
Sr. DR

Date of Hearing : 08.01.2026

Date of Pronouncement : 12.01.2026

ORDER

Per Arun Khodpia, AM:

This appeal is filed by the assessee challenging the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [for short “ld. CIT(A)”] dated 28.03.2025 for the AY 2019-20, arises from the assessment order passed under section 147 of the Income Tax

Act, 1961 (the Act) dated 29.02.2024 by the Assessment Unit, Income Tax Department. The grounds of appeal raised by the assessee are as under:

“1. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in not treating the reassessment process as invalid as the notice issued u/s 148 of the Act dated 31/03/2023 had been issued by the Jurisdictional assessing officer (JAO) and not by faceless officer (NFAC) and also erred in not following the applicable Jurisdiction decision of Hon'ble Bombay High Court in case of Hexaware Technologies Ltd. (Bombay HC)- Writ Petition No. 1778 of 2023 dated 03/05/2024

2. On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in not deleting the addition made u/s 69C of the Income Tax Act, 1961 ('the Act') of Rs. 35,68,440/- on account of purchase of goods from M/s KMP and Sons Trading Pvt. Ltd.

3. On the facts and circumstances of the case and in law, the Learned AO/Commissioner of Income Tax (Appeals) erred in not deleting the addition made in spite of the fact that the supporting documents such as reply letter, ledger confirmation, bank statement of payment made, Balance sheet, P&L account, audit report and ITR filed of the seller has been provided.

4. On the facts and circumstances of the case and in law, the Learned AO/Commissioner of Income Tax (Appeals) erred in not deleting the addition being against the principle of natural justice and order not as per judicial pronouncements.”

2. Brief facts of the case are that the subjected assessment is completed under section 147 r.w.s. 144 r.w.s. 144B of the Act on 29.09.2024, by making an addition of Rs. 35,68,440/- on account of bogus purchase.

3. Being aggrieved with such addition, assessee preferred an appeal before the ld. CIT(A), however the assessee remained totally non-complaint before the ld. CIT(A), therefore, the appeal of assessee is dismissed by the ld. CIT(A) on account of non-compliance / non-prosecution.

4. Before us the appeal of assessee found to be delayed for a period of 162 days, in explanation to such delay the ld. AR of the assessee submitted that, the assessee was dependent on his earlier Counsel, who had not attended the proceedings before the ld. CIT(A) and even had not informed the assessee about the passing of the impugned order. The ld. AR placed his reliance on the certain decisions of Hon'ble Apex Court as well as Hon'ble Bombay High Court with a plea that in the interest of justice, the assessee may be provided with one more opportunity and the condonation may not be refused only for the fault and sheer mistake or oversight on the part of his legal or tax advisor.

5. Per contra, ld. Sr. DR objected to the request of condonation, he placed his reliance on a recent decision of ITAT, Mumbai SMC Bench in the case of **Attivo Protezione Pvt. Ltd. vs. ITO in ITA No. 5380/Mum/2023 dated 31.10.2025**, wherein a delay of **1370 days** on account of wrong advice of Tax Consultant was denied treating the same as no sufficient cause for condoning the delay. In rebuttal, the ld. AR of the assessee submitted that the delay in present case is 162 days as against the delay of 1370 days in the case referred to by ld. Sr. DR, both these cases are un-comparable and therefore does not support the contentions of revenue in present case.

6. After considering the aforesaid facts and circumstances following the principle of natural justice and the guiding principles by the Hon'ble Apex

Court to deal with the matter of condonation of delay with a justice oriented and liberal approach, we deem it fit to allow the delay in filing of appeal in present matter for 165 days and accordingly the condonation of delay is granted.

6. Coming to the merit of issue of the present matter wherein the addition was made on account of bogus purchases. It was the submission by Ld. AR that all the purchases are genuine for which necessary evidence were also produced before the Authorities below, therefore the entire addition is liable to be deleted.

7. Per contra, ld. Sr. DR representing the revenue submitted that the assessee was unable to submit details like name of driver, transportation payment, delivery challan, etc. before the ld. AO as well as before the ld. CIT(A), therefore the addition was justified and deserves to be upheld.

8. We have considered the rival submissions and perused the material available on record. Admittedly in present case, the assessee was not represented before the ld. CIT(A). All the notices issued under section 250 were remained un-responded, therefore the appeal of assessee was dismissed *in limine* on account of non-prosecution, whereas it was obligatory on the ld. CIT(A) to decide the issue on merits also, after considering the facts and material available on record, we take support from the decision of **Hon'ble Bombay High Court** in the case of **Hon'ble Mumbai High Court** in the case

of *CIT vs. Premkumar Arjundas Luthra (HUF)- [2016] 69 taxmann.com 407*

(Bombay), wherein the Hon'ble Court has observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of [s. 251](#) of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under [s. 246A](#) of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

9. In view of the facts and circumstances of instant case, following the decision of Hon'ble High Court referred to, we find it appropriate to restore the matter back to the file of Id. CIT(A), with one more opportunity to the assessee so as to represent its case in a fair and justified manner.

10. Needless to say, the assessee shall be provided with reasonable opportunity of being heard in the set-aside delay proceedings. The assessee also needs to be vigilant and complaint enough to respond to the notices issued under section 250 of the Act, failing which the Id. Appellate Authority would be at liberty to decide the matter in accordance with the mandate of law.

11. In result, the appeal of assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 12-01-2026.

Sd/-
(PAWAN SINGH)
Judicial Member

Mumbai, Dated : 12-01-2026.

**SK, Sr. PS*

Sd/-
(ARUN KHODPIA)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai