

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER
ITA No. 5877/MUM/2025 (AY: 2016-17)
ITA No. 5878/MUM/2025 (AY: 2016-17)
(Physical hearing)

Bina Ghosh A- 801, Shanti Vaibhav CHS, Sector 42A, Seawoods, Nerul, Navi Mumbai, Maharashtra – 400706. [PAN : BGZPG4116M]	vs	Income Tax Officer Tower No. 6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai, Maharashtra – 400703.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Jayant Bhatt, CA
Revenue by	Shri Layaqat Ali Aafaqui, Sr. DR
Date of Institution	24.09.2025
Date of hearing	19.01.2026
Date of pronouncement	19.01.2026

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeals by assessee are directed against the separate orders of Id. CIT(A) / NFAC dated 29.07.2025 & 30.01.2025 respectively both the Assessment Year (AY) 2016-17. In ITA No. 5878/M/2025, the assessee has challenged the addition in quantum assessment. In ITA No. 5877/M/2025, the assessee has challenged penalty levied under section 271(1)(C). Since certain facts in both the appeals are common, therefore, with the consent of parties both the appeals were clubbed, heard together and are decided by common order to avoid the conflicting finding. The facts in ITA No. 5878/M/2025 being appeal against the addition in quantum assessment is treated as lead case. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in Law, the order passed by the Learned CIT Appeal is bad in law, as it is violative of Principles of Natural

justice and that of jurisprudence by not affording any opportunity to the Appellant to present the case.

2. On the facts and circumstances of the case and in Law, the Learned CIT Appeal has erred in dismissing the appeal in limine without considering the merit of the case.

3. On the facts and circumstances of the case and in Law, the Learned CIT Appeal has erred in not condoning the delay considering the facts of the case., where the Appellant was a housewife and was not required to even file the Income Tax Return and had no income or investment requiring her to file the return

4. On the facts and circumstances of the case and in Law, the Learned CIT Appeal has erred in confirming the order of the Assessing Officer which itself is bad in law. Therefore Order of the Learned CIT Appeal should be set aside as also that of AO.

5. On the facts and circumstances of the case and in Law, the Learned CIT Appeal has erred in dismissing the Appeal in limine and thereby confirming an addition of Rs 59,66,000

6. On the facts and circumstances of the case and in Law having decided the Appeal in limine. he has erred in confirming the order of the AO which is bad in law as the notice is issued by JAO as against FAO

7. The Appellant craves the right to add, amend, alter, substitute, modify any or all the grounds of appeal at the time of hearing.

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that during the relevant financial year, the husband of assessee purchased a residential property and the name of assessee was included in the sale deed registered with Sub-Registrar – 3, Thane. Entire sale consideration was paid by her husband. The assessee was not having any taxable income during the relevant financial year; therefore, no return of income was filed. No notice either under section 148 or any other show cause notices was served on the assessee; therefore, no compliance could be made. The assessing officer also levied

penalty under section 271(1)(c). On realising about passing of the assessment order, the assessee filed appeal before Id. CIT(A). Along with the appeal, the assessee filed application for condonation of delay. The assessee explained the delay of 306 days in filing appeal. In the application for condoning delay, the assessee stated that no notice during the assessee was received. The assessee was residing in a rented accommodation and shifted to her own house in February, 2016. Notice if any, may have been sent at rented premises, which could not be complied. The assessee is a home maker and not regularly checked her email and nor filing regular return of income, thus email notice if any was not noticed. The Id. AR of the assessee submits that there was reasonable cause as the delay was neither intentional nor deliberate but due to the reasons explained. The Id. CIT(A) not condoned such delay and dismissed the appeal as unadmitted. The Id. CIT(A) has not discussed any facts on merit. The Id. AR of the assessee submits that assessee has goods case on merit and likely to succeed, if the case of assessee is considered on merit. The assessee may be allowed one more opportunity to contest her case on merit. The matter may be restored to the file of assessing officer with the liberty to file details about payment of sale consideration by her husband.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue after hearing the submission of assessee opposed the plea of condonation of delay. However, on merit, the Id. Sr. DR for the Revenue submits that lower authorities have passed ex-parte order. Thus, matter may be restored to the assessing officer, in the event of condoning the delay.

4. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We find that assessing officer while passing the assessment order recorded that he has information that assessee has purchased immovable property during the relevant financial year for the consideration of Rs. 56,00,000/-. The assessing officer, further, recorded that assessee has not responded either in response to notice under section 148 or various other notices. The assessing officer thereby proceeded under section 144 and added the entire sale consideration plus value of stamp duty and other expenses of Rs. 30,000/- thereby made total addition of Rs. 59,66,000/- and taxed the same under section 115BBE in the assessment order on 29.02.2024 passed under section 147 r.w.s. 144. The assessing officer also levied penalty under section 271(1)(c) of the Act vide order dated 23.08.2024. On coming to know about assessment order, the assessee filed appeal before Id. CIT(A). Along with the appeal, the assessee filed application for condonation of delay of 306 days in filing appeal. The delay was not condoned by Id. CIT(A) by taking view that there is deliberate in action on the part of assessee and there is clear latches. The Id. CIT(A) relied upon the decision of Hon'ble Apex Court in Maji Sannemma @ Sanyasi Rao versus Reddy Sridevi & Ors. in Civil Appeal No. 7696 of 2021 and dismissed the appeal as unadmitted.
5. We find that assessment was completed under section 144. The assessing officer in para-2 of assessment order recorded that no response was received. The assessing officer nowhere recorded that if any notice in physical form was served upon or not. The assessee while filing appeal before Id. CIT(A) categorically contended that due to change in address, no notice was served.

Notice through e-mail was not checked as the assessee is not regular income tax filer. The assessee provided her different address which is the address of assessee's own house, on the purchase of which the impugned additions were made. The Id. CIT(A) dismissed the appeal by referring to the decision of Majji Sannemma @ Sanyasirao versus Reddy Sridevi & Ors. (supra). We find that the ratio of decision relied upon by Id. CIT(A) is based on a different set of facts. In the said case, there was a delay of 1011 days. The explanation offered by the respondent in that case has not given any explanation, much less sufficient or satisfactory explanation as has been recorded by Hon'ble Court. However, in the present case, the assessee has shown sufficient cause that no notice during the period the assessee was served. The assessee has clearly and categorically contended that there is no deliberate delay on the part of the assessee. We find that the assessee has shown sufficient cause for filing the appeal belatedly. Thus, considering the overall facts and circumstances of the present case, and the principle under law that when technical considerations and cause of substantial justice are pitted against each other, cause of substantial justice may be preferred. Hence, delay in filing the appeal before Id. CIT(A) is condoned. The order of Id. CIT(A) in not condoning the delay is set aside. Further, considering the fact that the assessment order is ex-parte and the Id. CIT(A) has not considered the merits of the case, therefore, we deem it appropriate to restore the matter to the file of the assessing officer to pass the assessment afresh. Needless to say that before passing the assessment order, the assessing officer shall allow fair and reasonable opportunity to the assessee. The assessee is also directed to be

more vigilant making timely compliance. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

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7. This appeal relates to penalty levied under section 271(1)(C). The appeal of assessee against the penalty under section 271(1)(c) was dismissed as unadmitted by not condoning the delay. As we have already condoned the delay in filing appeal in quantum assessment, thus, delay in filing before Id CIT(A) is also condoned with similar observation. Further, considering the fact that we have restored the appeal in quantum assessment to the file of assessing officer, therefore, the penalty levied under section 271(1)(c) on impugned assessment order will not survive. However, the assessing officer is given liberty to initiate the penalty afresh in accordance with law only after passing order giving effect to this order. In the result, the grounds of appeal raised by assessee is allowed. In the result, appeal of assessee is allowed.
8. In the result, Appeal No. 5878/M/2025 is allowed for statistical purpose and Appeal in ITA No. 5877/M/2025 is allowed.

Order pronounced in the open court on 19 /01/2026 at the time of hearing of the appeal.

**Sd/-
(ARUN KHODPIA)
ACCOUNTANT MEMBER**

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

Mumbai; Dated 19/01/2026
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai