

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE-PRESIDENT
&
MRS. RENU JAUHRI, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 6244/DEL/2025; Assessment Year: 2014-15
ITA No. 6245/DEL/2025; Assessment Year: 2015-16
ITA No. 6246/DEL/2025; Assessment Year: 2016-17
ITA No. 6247/DEL/2025; Assessment Year: 2017-18
ITA No. 6248/DEL/2025; Assessment Year: 2018-19**

Sushma Shrestha A-34, Vasant Marg Vasant Vihar New Delhi-57	Vs	DCIT Central Circle-13 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. FZIPS4355E		

Assessee by : Dr. Manas Shankar, Advocate
Ms. Shouryendu Ray, Advocate

Revenue by : Shri Jitender Singh, CIT DR

Date of Hearing: 08.01.2026	Date of Pronouncement: 21.01.2026
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ORDER

PER RENU JAUHRI :

The above captioned five appeals are preferred by the assessee against the order dated 15.03.2025, passed by Ld. CIT(A), Delhi u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as, "Act").

2. At the threshold, it is noted that the Appeals are time-barred by 125 days. An application for condonation of delay has been filed by the assessee.

3. Since common issues have been raised in these appeals filed by the assessee, these are being disposed off by a common order. ITA No. 6244/DEL/2025 for A.Y. 2014-15 is taken up as the lead case and, the grounds of appeal are reproduced below:

“A. That the Impugned Order, passed by the Commissioner of Income-Tax (Appeals), by way of ex-parte proceedings, is illegal and bad in law.

B. That the Ld. CIT(A) has erred both in law and on facts in passing the Impugned Order without affording a fair and reasonable opportunity of hearing to the Appellant. The Appellant, being a foreign national not residing in India, did not regularly access the income tax portal where the notice was uploaded. Further, the notices sent by e-mail to an employee of the family concern remained unattended due to inadvertent oversight, resulting in denial of an effective opportunity of hearing. Moreover, the Ld. CIT(A) has failed to serve a physical notice to the Appellant's local address. Therefore, the Ld. CIT (A) has acted in gross violation of the fundamental principles of natural justice by failing to give the Appellant the opportunity to rebut the unsubstantiated conjectures of the Respondent while mechanically replicating the Assessment Order without fresh application of mind. Therefore, on the ground of violation of the fundamental principle of audi alteram partem, the Impugned Order ought to be set aside.

C. That the Impugned Order has been passed in contravention of the legal mandate requiring physical hearing in the present matter. It is submitted that the concerned CIT(A),

being part of the Central Charge, was statutorily required to conduct the proceedings through physical mode in accordance with the applicable provisions of the Act and CBDT notifications. The failure to adhere to this procedural requirement has resulted in a denial of effective opportunity of hearing to the Appellant, thereby vitiating the proceedings and rendering the Impugned Order liable to be set aside.

D. The Ld. CIT (A) has failed to consider the decision of the Hon'ble Supreme Court in Dhakeswar Cotton Mills Lid v. Commissioner of Income Tax, 1955 AIR 65 which protects the assessee's right to full opportunity to be heard and place material on record. The Hon'ble Supreme Court held that improper rejection of the assessee's submission by the Ld. Income Tax Appellate Tribunal and reliance on conjectures and suspicions of the assessing officer is a gross violation of natural justice and directed the appeal to be remanded for reassessment. In the present case, the Ld. CIT (A) summarily dismissed the appeal by mechanically replicating the unsubstantiated surmises and conjectures of the Assessment Order, without according the Appellant fair and reasonable opportunity to be heard. Therefore, the Impugned Order is contrary to the Hon'ble Supreme Court's ruling and ought to be set aside.

E. That the Ld. CIT (A) acted in gross violation of the binding directions of Central Board of Direct Taxes ("CBDT") recorded vide Instructions dated 23.12.2003, 19.06.2015 and 08.03.2018 ("Instructions"). The CBDT vide the Instructions repeatedly impressed upon the Ld. CIT (A) to strictly comply with the direction to pass the appellate order within 15 (fifteen) days of the last hearing, and that any lapse on this account is to be viewed adversely. In the present case, the Ld. CIT (A) passed the Impugned Order 4 (four) months after the last date fixed for hearing on 13.11.2024. Therefore, the Impugned Order ought to be set aside for vitiating the CBDT mandated timelines.

F. That the belated Impugned Order ought to be set aside and the appeal ought to be reassessed by Ld. CIT (A) in consonance with the established judicial precedence. It is submitted that, in G. Shoes Exports v. CIT, MA No. 25/Mum/2017, the Mumbai bench of this Ld. Tribunal, reinforced the judgement of the Hon'ble Bombay High Court's in Shivsagar Veg. Restaurant v. ACIT, 317 ITR 433 and held that an inordinately delayed order is liable to be recalled and heard afresh. In the present case, the Ld. CIT (A) passed the Impugned Order after an unwarranted delay of nearly 4 (four) months. Therefore, in light of the established judicial precedent, the Impugned Order is vitiated and ought to be set aside.

G. That the Ld. CIT (A) has failed to consider the orders of this Hon'ble Tribunal which give effect to CBDT's Instructions and nullify belated orders by the Ld. CIT (A). In Noida v. Jayant Budhiraja, ITA No. 1178 DEL 2020, this Hon'ble Tribunal held that deciding an appeal beyond 15 (fifteen) days of the last hearing is a jurisdictional error as it contravene the CBDT's Instruction; therefore, such inordinately delayed order of the Ld. CIT(A) is ultra vires. This is further bolstered by Durgesh Autofin Pvt. Ltd., Bijnor v ACIT, ITA No. 2605 DEL 2018, wherein this Hon'ble Tribunal held that the order passed by the Ld. CIT (A) was invalid as it contravened the 15 (fifteen) days' timelines set out by the CBDT. In the present case, the Ld. CIT(A) has passed the Impugned Order in a mechanical manner nearly four months after the last notice was issued. Therefore, the Impugned Order is invalid in the eyes of law and ought to be set aside.

H. That the Act is a welfare legislation which ought to be interpreted in a manner granting the benefit of doubt to the assessee. Hon'ble Income Tax Appellate Tribunal, Raipur in Brajesh Singh Bhadoria v. The Deputy/Assistant Commissioner of Income Tax, Central Circle-2, Naya Raipur, IT(SS)A Nos. 1 to 6, 8 & 9/RPR/2025 and Ravikumar Kumhar v ITO, Bilaspur, ITA No.36/RPR/2024 granted the assessee another opportunity to be heard by the Ld. CIT (A)

noting that while there was no compliance by the assessee mala fide cannot be attributed and therefore, benefit of doubt ought to be given favourably. In light of this interpretation of the Act which protects the assessee's interests, the Impugned Order ought to be set aside and a fair and reasonable opportunity to be heard must be granted to the Appellant.

I. That the Appellant reserves the right to amend, modify, or raise additional grounds of appeal at the time of hearing with the leave of this Hon'ble Tribunal. ”

3. At the outset, it is noted that the appeal is delayed by 125 days. The assessee has filed an application of delay along with an affidavit seeking condonation. It has been submitted that the assessee is a senior citizen and a permanent resident of the United States since last several years. The notices sent by the Department by e-mail to employee of the family concern remained unattended as these were not brought to the notice of the assessee by him inadvertently. As soon as the matter came to the notice of the assessee, immediate steps were taken to file the appeal, resulting however in the delay which was entirely *bonafide* and due to circumstances beyond the control of the assessee.

3.1 After hearing both the parties, we are of the considered view that there is a reasonable cause for the delay in filing of appeal and, therefore, we, hereby condone the same.

4. Brief facts of the case are that a search action was undertaken on 31.10.2018 in the cases of ***Shri Mukund Raj Shrestha & Ors.*** Including the assessee. The cases were centralized with DCIT, Central Circle-13, New Delhi and notice u/s 153A was issued to the assessee on 09.12.2020. In response, the assessee filed her return declaring NIL income for A.Y. 2014-15 on 22.01.2021. The assessee had claimed her residential status as 'Non-resident' in the return. Ld. AO noticed that the TDS was deducted in the case of the assessee by M/s. SBL Pvt. Ltd. by treating her as resident and even in the bank accounts, the status of the assessee was shown as 'Resident'. But in the income tax return filed on 22.01.2021, the assessee has shown her status as non-resident. After obtaining information regarding arrival and departure of the assessee from India, from the Competent Authority, Ld. AO rejected the assessee's claim of being a non-resident during the year under consideration and completed the assessment at NIL assessed income vide order dated 28.07.2021.

3.1 Aggrieved, the assessee preferred an appeal before Ld. CIT(A). Vide order dated 15.03.2021, Ld. CIT(A) dismissed the assessee's appeal *ex parte*. Further aggrieved, the assessee has filed an appeal before the Tribunal.

4. Before us, the Ld. AR has submitted that no proper opportunity was given by the Ld. CIT(A) to the assessee and the notices sent on e-mail were not received

by the assessee as explained in the affidavit for condonation of delay. Further, no physical notice was issued by the Ld. CIT(A) and, therefore, Ld. AR has requested for remand back of the case to Ld. CIT(A) for fresh adjudication. He has further submitted that in the other group cases, in similar facts and circumstances, the *ex parte* orders of Ld.CIT(A) have been set aside for fresh adjudication by the Hon'ble Co-ordinate Bench in *ITA Nos. 4861 to 4865/Del/2025* in the case of *Bishnu Krishna Shrestha* & *ITA Nos. 4902 to 4906/Del/2025* in the case of *Mukund Raj Shrestha*.

4.1 Ld. DR has not objected the above said proposition.

5. After hearing the rival submissions and careful consideration of the material placed before us, we deem it appropriate to restore the appeal back to Ld. CIT(A) for fresh adjudication, after giving reasonable opportunity to the assessee. The assessee is also directed to be more vigilant and make requisite compliance before Ld.CIT(A).

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

7. Since identical grounds have been taken in the remaining appeals i.e., ITA No. 6245/DEL/2025; A.Y. 2015-16, ITA No. 6246/DEL/2025; A.Y. 2016-17,

ITA No. 6247/DEL/2025; A.Y. 2017-18, ITA No. 6248/DEL/2025; A.Y. 2018-19, the above order shall apply *mutatis mutandis* to these appeals also.

8. In the result, all the five appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 21-01-2026.

Sd/-
(MAHAVIR SINGH)
Vice President

Sd/-
(RENU JAUHRI)
Accountant Member

Dated: 21 .01.2026

Pooja Mittal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi