

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.5025/M/2025
Assessment Year: 2012-13**

M/s. Nucleus Fincons Pvt. Ltd. (Since Strike Off by ROC from 24/02/2017 through Erstwhile Director, Kishore Patki), 503, Ankita Apartments, Opp. Gymkhana, Navghar Road, Mulund, Mumbai – 400081. PAN – AABC6734A	Vs.	ITO 15(2) (2), Aaykar Bhavan, M.K. Road, Mumbai – 400020.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nishit Gandhi, Ld. A.R.
Revenue by : Shri A.M.K. Mahadevan, Sr. D.R.

Date of Hearing : 20.11.2025
Date of Pronouncement : 21.01.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated **22.09.2023**, 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. **2012-13**.

2. In the instant case, the AO vide assessment order dated 27.11.2019 under Section 147 r.w.s. 147 of the Act has made the additions of Rs.7,00,000/- and Rs.19,88,290/- respectively as unexplained income under Section 68 of the Act and estimation of income @ 1 + 1 % of Rs.9,94,14,500/- on credit and debit side.

3. The Assessee being aggrieved against the additions, as well as the assessment order, filed first appeal before the Ld. Commissioner challenging the same however, despite issuing various notices eventually made no compliance and/or filed no submissions and documents. Therefore, in the constrained circumstances, the Ld. Commissioner decided the appeal of the assessee as ex-parte, while relying on the judgment of the Tribunal in the case of *CIT Vs. Multiplan India Pvt. Ltd. [38 ITD 320 (Delhi)]* but not on the merits of the case and thus, the impugned order is liable to be set aside, specifically in view of the judgment passed by the jurisdictional High Court in the case *Commissioner of Income Tax Vs. Premkumar Arjundas (HUF) ITA No.2336 of 2013 dated 25.04.2016 (2017) 297 CTR (Bom.) 614*, wherein the Hon'ble High Court has held as under:

“That it is not open to the CIT(A) to dismiss the appeal on account of non-prosecution. Further law does not empower to the CIT(A) to dismiss the appeal for non-prosecution as if evident from the provisions of the Act”.

4. 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.

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

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

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

Order pronounced in the open court on 21.01.2026.

**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.