

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER &
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 7532/Mum/2025
(Assessment Year: 2018-19)**

Hasmukh Hiralal Shah 9/13, Nehru Nagar, Opp. BDD Chawl No. 9, Worli Mumbai-400 018	Vs.	National Faceless Appeal Centre /ITO-22(1)(6), Room No. 206, Piramal Chambers, Parel, Mumbai – 400 012
PAN/GIR No. AAVPS2340A		
(Applicant)		(Respondent)

Assessee by	Shri Vimal Punmiya, Ld. AR
Revenue by	Shri Ritesh Misra, Ld. DR

Date of Hearing	29.01.2026
Date of Pronouncement	03.02.2026

आदेश / ORDER

PER MAKARAND VASANT MAHADEOKAR, AM:

This appeal This appeal is directed against the order passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”], dated 20.08.2025 arising out of the assessment order passed under section 143(3) read with sections 143(3A), 143(3B) and 144B of the Income-tax Act, 1961 [hereinafter referred to as “the Act”] by

the Assessing Officer, Ward 22(1)(6), Mumbai[hereinafter referred to as “Assessing Officer”], dated 15.04.2021, for Assessment Year 2018–19.

Condonation of delay

2. The Registry has noted a delay of 19 days in filing the present appeal before the Tribunal. The assessee has filed a petition for condonation of delay supported by an affidavit. In the affidavit, the assessee has stated that he became aware of the order of the learned CIT(A) only upon receipt of a recovery communication from the Income-tax Officer and thereafter, without any undue delay, he collected the relevant papers and filed the appeal before the Tribunal. It has been averred that the delay was neither deliberate nor intentional but occurred due to circumstances beyond the control of the assessee.

3. During the course of hearing, the learned Departmental Representative raised no objection to the condonation of delay.

4. Having considered the explanation furnished on oath and keeping in view that the delay is of a short duration and that no mala fides or deliberate negligence is attributable to the assessee, and further considering that the Revenue has not opposed the prayer for condonation, we are satisfied that sufficient cause has been shown for the delay. Accordingly, the delay of 19 days in filing the appeal is condoned and the appeal is admitted for adjudication on merits.

Facts of the Case

5. The assessee filed his return of income for Assessment Year 2018-19 on 18.10.2018, declaring total income of Rs. 17,35,500/-. The case was selected for scrutiny under CASS, the stated reason being investment in immovable property. During the year under consideration, the assessee entered into an agreement for purchase of an under-construction residential flat being Flat No. 1901, 19th Floor, ZIUS Heritage, Lower Parallel Division, N. M. Joshi Marg, Mumbai – 400001. The agreement for sale was registered on 17.12.2017, showing consideration at Rs. 1,51,00,000/-.

6. During the course of assessment proceedings, the assessee was required to explain the source of funds for investment in the said property. Against the investment of Rs. 1,51,00,000/-, the assessee furnished source of funds only to the extent of Rs. 28,52,000/-. The Assessing Officer treated the balance amount of Rs. 1,22,48,000/- as unexplained. Further, the Assessing Officer noted that the assessee had not furnished the source of stamp duty expenses amounting to Rs. 9,31,000/-. Accordingly, the total unexplained investment was worked out at Rs. 1,31,79,000/- and was added under section 69 of the Act.

7. The Assessing Officer further observed that the stamp duty valuation of the property was Rs. 1,71,81,968/- as against the agreement value of Rs. 1,51,00,000/-, resulting in a difference of Rs. 20,81,968/-. Invoking the provisions of section 56(2)(x) of the

Act, the Assessing Officer treated the said difference as income from other sources. Accordingly, the total income of the assessee was assessed at Rs. 1,69,96,470/-. Penalty proceedings under sections 270A and 271AAC were also initiated.

8. Aggrieved by the assessment order, the assessee filed an appeal before the learned CIT(A). The learned CIT(A) issued several notices fixing the appeal for hearing on different dates. However, no response was received from the assessee. It was recorded that no written submissions or additional evidence in terms of Rule 46A were filed before the learned CIT(A). The learned CIT(A) also observed that the appeal was filed beyond the period prescribed under section 249(2) and no separate petition for condonation of delay was filed before him. Holding that the assessee failed to prosecute the appeal and that there was no material on record to depart from the findings of the Assessing Officer, the learned CIT(A) dismissed the appeal in limine by an ex parte order.

9. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising following grounds of appeal:

1. *On the facts and circumstances of case and in law, the Ld. CIT has erred in confirming the Assessment Order passed by the Ld. AO under section 143(3) r.w.s. 144B of Income Tax Act which is passed against the principal of natural justice.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT has erred in confirming the addition of Rs.1,31,79,000/- made by the Ld. AO on account of unexplained investment in house property under section 69 of the Income Tax Act, 1961.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT has erred in confirming the addition made by the Ld. AO without*

referring the case to the departmental valuation officer as there is a difference between the market value and agreement value.

- 4. On the facts and in the circumstances of the case and in law, the Ld. CIT has erred in confirming the addition of Rs.20,81,968/- made by the Ld. AO being the difference between the market value of Rs.1,71,81,968/- and the sale consideration of Rs.1,51,00,000/-.*
- 5. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in charging interest under section 234A, 234B AND 234C of the Income Tax Act,1961.*
- 6. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in levying penalty under section 270A and 270AAC of the Income Tax Act,1961.*
- 7. The Appellant craves leave to add amend and or delete any of the above grounds of Appeals.*

10. During the course of hearing before us, the learned Authorised Representative(AR) submitted that the order passed by the learned CIT(A) is an ex parte order. It was contended that the appeal before the first appellate authority came to be disposed of without effective representation and without considering the factual and legal contentions of the assessee. It was, therefore, pleaded that in the interest of justice, the impugned order of the learned CIT(A) be set aside and the matter be restored to his file for fresh adjudication after affording reasonable opportunity of being heard.

11. The learned AR also reiterated that the property was under construction, jointly purchased with the assessee's wife, that only part payments aggregating to Rs. 89,66,747/- had been made, and that an independent valuation report of a Government approved valuer had valued the property at the agreement value of Rs. 1,51,00,000/-. It was further submitted that the addition

under section 69 and section 56(2)(x) could not have been sustained without examining these aspects.

12. The learned Departmental Representative, on the other hand, did not raise any objection to the request of the assessee for restoration of the matter to the file of the learned CIT(A).

13. We have considered the rival submissions and perused the material available on record. It is evident from the order of the learned CIT(A) that the appeal has been dismissed ex-parte for non-prosecution and without adjudicating the issues on merits. The learned CIT(A) has not examined the factual contentions of the assessee relating to joint ownership, under-construction status of the property, source of funds, or the valuation report relied upon by the assessee.

14. It is settled law that the first appellate authority is required to dispose of the appeal on merits after considering the facts and submissions on record. An appeal cannot be dismissed merely for non-prosecution without adjudication on merits. The order of the learned CIT(A) in the present case is, therefore, not sustainable. Having regard to the totality of facts and in the interest of substantial justice, we are of the considered view that the matter deserves to be restored to the file of the learned CIT(A) for fresh adjudication.

15. Accordingly, we set aside the impugned order passed by the learned CIT(A) and restore the matter to his file with a direction to decide the appeal afresh on merits, in accordance with law, after

affording the assessee a reasonable opportunity of being heard. The assessee is also directed to cooperate in the appellate proceedings and to file all necessary submissions and evidences in support of his case.

16. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 03.02.2026.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(MAKARAND VASANT MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 03/02/2026
Dhananjay, Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai