

**IN THE INCOME TAX APPELLATE TRIBUNAL
'F' BENCH, MUMBAI**

श्री संदीप गोसईन, माननीय न्यायिक सदस्य एवं

श्री ओम्कारेश्वर चिदरा, माननीय लेखा सदस्य

**SHRI SANDEEP GOSAIN, HON'BLE JUDICIAL MEMBER
AND**

SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.6238/MUM/2025

(निर्धारणवर्ष/ **Assessment Year: 2020-21**)

ACIT, Circle-1 Kalyan	Vs.	FT Textiles Private Limited Bhiwandi PAN : AABCF4516C
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Nirbhay Mirchandani A/w Shri Vijay Kavrani, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Ms.Kavitha Kaushik,Sr.DR (virtually appeared)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	02/12/2025
घोषणा की तारीख/ Date of Pronouncement	:	04/02/2026

ORDER

PER OMKARESHWAR CHIDARA, AM:

This appeal is filed by the Revenue against the order of the ADDL/JCIT(A)-1 Ahmedabad in DIN & Order No. ITBA/APL/S/250/2025-26/1078596976(1) dated 17.07.2025 for the A.Y.2020-21.

2. The only issue to be adjudicated in this Revenue's appeal is whether the first appellate authority is correct in allowing the appeal of the appellant by believing their version of delay in filing the appeal as well as on merits w.r.t. "genuineness of expenditure claimed" without affording an opportunity to the Ld.AO.

3. The CPC has passed an order u/s 143(1) of the Income Tax Act, 1961 ("the Act"), making an addition of Rs.2,28,32,300/- as the details of "Other Expenses" were not filed along with return of income, while uploading the same. The appellant claims that due to technical glitches, they could not enclose the details of "Other Expenses". Otherwise, their books are properly audited and all the expenditure claimed was backed by evidences. Before the Ld.CIT(A), the Ld.AR of the appellant has mentioned that the 143(1) notice sent by CPC was not read by them and the same might have gone to spam folder and there is delay in filing of appeal before the Ld.CIT(A) by more than 2 ½ years. Once recovery proceedings have been started by Income Tax Department, they came to know about the demand. The appeal is filed before the Ld.CIT(A), stating that the appeal was filed with the delay of more than 900 days, because, they are not aware of the notice issued by the CPC, with regard to the adjustments proposed therein. After the notice was issued to them by the CPC, the adjustments were made by the CPC and the

demand was also raised. Only after the Income Tax Department started recovery action, they came to know that certain adjustments were made by the CPC. Immediately, an appeal was filed before the Ld.CIT(A). The Ld.CIT(A) has taken up the appeal, condoned the delay and went on to adjudicate the issues therein. The appellant has stated before the Ld.CIT(A) that there was certain technical glitches in the system and hence could not upload the details of "other expenses". In view of the same, the CPC has added the same to the income returned by them. Otherwise all the details were properly documented and the books of accounts were audited by the CAs and hence, the expenditure claimed should be allowed. Agreeing with the submissions of the appellant, the Ld.CIT(A) gave relief and passed an order accordingly.

4. Aggrieved by the order of the Ld.CIT(A), the Revenue filed appeal before the ITAT, stating that the Ld.CIT(A) did not adjudicate properly the issues relating to delay and the delay should not have been condoned. Consequently, the department was not given an opportunity to present their case before the Ld.CIT(A) and hence Rule 46A comes into play. As no opportunity was given by the Ld.CIT(A), the department is aggrieved and filed this appeal and submitted that Rule 46A of Income Tax Rules says that wherever additional evidence is produced, the department should be given an opportunity to counter the same. In

this particular case, the Ld.CIT(A) took up the case, condoned the delay and also gave relief to the appellant on merits also without giving an opportunity to the department in terms of provisions of Rule 46A of the Income Tax Rules. As mentioned above, the Department is aggrieved and filed this appeal.

5. The Ld.DR before the ITAT has relied on the ground of appeal and argued that the department should be given an opportunity as per Rule 46A with regard to the delay as well as on merits.

6. Per contra, the Ld.AR of the appellant has argued that the Ld.CIT(A) is correct and judicious in taking up the appeal and giving relief to them, because all the required documents/papers etc. were submitted before him and it is only after perusal and application of mind, relief was given to them and hence, the appeal of the department is not correct.

7. Heard the rival submissions and the Bench has decided that the argument of the department is correct, as no opportunity was given to the Revenue before passing the order/adjudicating the appeal. In this regard, the Bench found support from the decision of Hon'ble Delhi High Court in the case of Commissioner of Income Tax (Central)-1 Vs. Manish Build Well Pvt. Ltd. in ITA No.928/2011, where, it was held that

the Tribunal ought to have restored the matter to the Ld.CIT(A) with the direction to him to comply with Sub Rule 3 of Rule 46A. Hon'ble Delhi High Court in the above cited case has clearly held that the department is entitled to file their counter and be heard about the additional evidences filed by the appellant for the first time before the Ld.CIT(A). In this regard, Para 23 of the order of Hon'ble Delhi High Court is worth reproduction, where, it was held that an opportunity shall be given to the Revenue, wherever the assessee files certain additional evidence before the Ld.CIT(A) for the first time and that material was not available with the Ld.AO.

“23. It is for the aforesaid reason that Rule 46A starts in a negative manner by saying that an appellant before the CIT (A) shall not be entitled to produce before him any evidence, whether oral or documentary, other than the evidence adduced by him before the assessing officer. After making such a general statement, which is in consonance with the principle stated in the above judgment, exceptions have been carved out that in certain circumstances it would be open to the CIT (A) to admit additional evidence. Therefore, additional evidence can be produced at the first appellate stage when conditions stipulate in the Rule 46A are satisfied and a finding is recorded. Rule 46 A reads:-

“Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.] We are highlighting these aspects only to press home the point that the conditions prescribed in Rule 46A must be shown to exist before additional evidence is admitted and every procedural requirement mentioned in the Rule has to be strictly complied

with so that the Rule is meaningfully exercised and not exercised in a routine or cursory manner. A distinction should be recognized and maintained between a case where the assessee invokes Rule 46A to adduce additional evidence before the CIT (A) and a case where the CIT (A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-Section (4) of Section 250. It is only when he exercises his statutory suo moto power under the above sub-section that the requirements of Rule 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT (A) to comply with the requirements of the Rule strictly.”

From the above it can be seen that the CIT(A) should first record reasons in writing for admitting the new evidence and the AO should be given a reasonable opportunity to rebut the arguments/evidences filed by appellant before CIT(A). From the order of Ld.CIT(A), it is observed that both these conditions were not fulfilled. Even otherwise also, Rule 46A was enacted in Income Tax Rules for this specific purpose only and the first appellate authority should give an opportunity to the Income Tax Department also whenever certain additional evidence was filed before them for the first time, which is not available with the assessing officer at the time of assessment. In view of the same, the Bench decides to remit the issue back to the file of the Ld.CIT(A) with a direction to get the inputs from the AO and pass an order denovo, on the issue of condonation of delay as well as merits.

8. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 4th February, 2026.

<p>Sd/- (संदीप गोसईन) (SANDEEP GOSAIN) न्यायिक सदस्य/JUDICIAL MEMBER</p>	<p>Sd/- (ओम्कारेश्वर चिदरा) (OMKARESHWAR CHIDARA) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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Visakhapatnam,
Dated 04.02.2026.
L.Rama/SPS

आदेश की प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	M/s FT Textiles Private Limited, 2097/1 Kazi Compound, Khadipar Bhiwandi, Bhiwandi
2.	राजस्व/ Revenue	The :	The ACIT, Circle-1, Kalyan
3.	The Principal Commissioner of Income Tax		
4.	विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR,ITAT		
5.	The Commissioner of Income Tax		
6.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam