

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
And
SHRI JAGADISH, ACCOUNTANT MEMBER**

**ITA No.8633/M/2025
Assessment Year: 2017-18**

Ashaben Babulal Gala, C-536, Panbai Nagar, Shreeprastha 2nd Road, Near Viva Super Market, Nalasopara (WEST), Umrale, Palghar, Maharashtra - 401203.	Vs.	National Faceless Centre, NFAC, New Delhi, ITO - 41(4)(1), Kautilya Bhavan, Mumbai.
(Appellant)		(Respondent)

PAN: AFZPG 0653 H

Present for:

Assessee by : Shri. Vikrant Vora
Revenue by : Shri. Surendra Mohan, (SR.D.R)

Date of Hearing : 23.02.2026
Date of Pronouncement : 23.02.2026

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 13.01.2025, 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. 2017-18.

2. In this case, at the outset, it is observed that there is a delay of 259 days in filing instant Appeal, on which the Assessee has claimed that, Assessee's husband was dealing with the Tax matters of the Assessee with his own Email ID. Somehow, after death of Assessee's husband, the Assessee could not make effective

compliances before the Assessing Officer. However, at last in response to show cause notice dated 18.04.2023 and on being advised by the purchaser of the property sold by the Assessee vide agreement for sale registered on 01.07.2016, filed her reply on 24.04.2023 before the AO. Somehow, the Assessment proceedings ultimately resulted into making the addition of Rs.56,91,400/- being differential amount between the stamp duty valuation of Rs.88,87,000/- and the amount of consideration shown at Rs.31,95,600/- in the aforesaid agreement for sale.

3. The Assessee being aggrieved though challenged the said addition by filing first Appeal before the Ld. Commissioner, however, in the absence of her husband, and lack of knowledge, and not getting the appropriate legal help, remained absent and/or made no compliance, which also resulted into passing the impugned order as ex-parte and more or less on non-prosecution but not on the merits of the case.

4. Thereafter, the Assessee somehow due to inadvertent mistake and not finding the relevant solution and/or legal assistance failed to file Appeal before the Tribunal challenging the impugned order dated 13.01.2025 within the time limit of 60 days, however, the Assessee filed it subsequently, but with a delay of 259 days and therefore the Assessee has prayed that in the interest of justice, the delay may be condoned by considering the delay petition, as a mercy Petition and the Appeal be decided on merit.

5. On the contrary, the Ld. DR refuted the claim of the Assessee by submitting that there was laches on the part of the Assessee for not filing the relevant submissions/documents before the authorities below.

6. The Ld. DR further submitted that even the reasons explained for delay are not in sync with the time framework, as the Assessee's

husband expired since long back and therefore the benefit of Assessee's husband, cannot be given to the Assessee.

7. We have heard the parties and given thoughtful consideration to the rival submissions of the parties and perused the relevant material on record. It is not in controversy that earlier the Tax compliances were made by the Assessee's Husband in the Assessee's case, on the Assessee's behalf. Further, the Assessee's husband was dealing with the Tax matters of the Assessee throughout the period. Further it is not the case of complete non-compliance before the Assessing Officer. In fact, the Assessee vide reply dated 24.04.2023 made full compliance, as also observed by the Assessing Officer in Page Nos.2 - 3 of the order. Further, admittedly, the Assessee being a widow is having no source of income as claimed by the Assessee. Further, the Assessee is also suffering a lot due to ill health and financial constraints, after her husband's death. Therefore, considering the reasons stated by the Assessee for the condonation of delay, which are otherwise supported with duly sworn Affidavit, as genuine, bonafide and unintentional and for substantial justice, we are inclined to condone the delay. **Thus, the delay is condoned.**

8. Coming to the merits of the case, we observe that though the impugned order is an ex-parte however, it is a fact that the same is not on merits of the case and therefore, the impugned order is liable to be set aside, specifically in view of the judgment of the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax Vs. PremkumarArjundas (HUF) ITA No.2336 of 2013 dated 25.04.2016 (2017) 297 CTR (Bom.) 614, wherein it has been held as under:

"That it is not open to the LCIT(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".

9. Thus, we are inclined to side the impugned order and remand the case to the file of the Ld. Commissioner for decision on merit. However considering the merits of the case prima facie, we observe that admittedly, the case of the Assessee was reopened after **03** years from the end of the relevant Assessment Year, by issuing various notices dated 24.04.2021 u/s. 148, 21.05.2021, u/s. 148A(b), 18.08.2022 u/s. 148A (d) and 19.07.2022 u/s 148 of the Act {being last notice} by getting approval from the Range Head i.e., Range-26(1), Mumbai and Principal Commissioner of Income Tax {Pr. CIT} – 17, Mumbai but not from the Sanctioning Authority i.e. Pr. CCIT, as prescribed in Section 151(ii) of the Act, and therefore violated such provisions of law, which would entail quashing of the aforesaid notices along with Assessment Order being void-ab-initio, therefore, the same are quashed by following Judgment of the Hon'ble Jurisdictional High Court in the case of Vodafone Idea Ltd. Vs. Deputy CIT (Writ Petition No. 2768 of 2022 decided on 06.02.2024), wherein the Hon'ble High Court ultimately quashed the order/notices u/s. 148A(d) and 148 of the Act, along with assessment order itself, having been issued on the basis of identical sanction, as involved in this case, by observing and holding as under:

“3. The impugned order and the impugned notice both dated 7th April, 2022 state that the Authority has accorded the sanction is the PCIT, Mumbai-5, The matter pertains to Assessment Year (AY) 2018-19 and since the impugned order as well as the notice are issued on 7th April, 2022, both have been issued beyond a period of three years. Therefore, the sanctioning authority has to be the PCIT as provided under Section 151 (ii) of the Act. The proviso to Section 151 has been inserted only with effect from 1st April, 2023 and therefore, shall not be applicable to the matter at hand.

4. In this circumstances, as held by this Court in *Siemens Financial Services Private Ltd. v. Deputy Commissioner of Income Tax & Ors.*, the sanction is invalid and consequently, the impugned order and impugned notice both dated 7th April, 2022 under section 148A(d) and 148 of the Act **are hereby quashed and set aside.**”

10. As we have quashed the notices/order under section 148 of the Act along with Assessment order, on the legal aspect itself, thus, inclined not to delve into the merits of the case, as adjudication of the same would prove to be futile exercise.

11. In the result, the Assessee's appeal is allowed on legal aspect.

Order pronounced in the open court on 23.02.2026.

**Sd/-
(JAGADISH)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

M. RanganathVithal
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.