

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)

I.T.A. No. 8510/Mum/2025

Assessment Year: 2012-13

Bharat Thakarshi Mamania A/701, Olympia Tower N.M. Joshi Marg Byculla Mumbai - 400013 [PAN: AABPM3713B]	Vs.	ITO – 22(1)(6)
(Appellant)		(Respondent)

Assessee by	Shri Viraj Mehta, A/R
Revenue by	Shri Limbasiya Kavan Nareshkumar, Sr. DR

Date of Hearing	02.02.2026
Date of Pronouncement	13.03.2026

ORDER

Per Smt. Beena Pillai, JM:

The present appeal filed by assessee arises out of the order dated 26/02/2025 passed by the Ld. Commissioner of Income Tax (Appeals)/Addl./JCIT(A) - 5, Chennai [hereinafter “the Ld.CIT(A)"] for A.Y. 2012-13 on the following grounds of appeal:-

“1. On the facts and circumstances and judicial pronouncements; the Ld. CIT(A) has erred in confirming there-opening of the assessment U/s 148 of Income Tax Act, 1961 on the fact that no documentary evidences has been brought on record by the learned assessing officer which proves that income has escaped the assessment. The assessment U/s 143(3) r.w.s. 147 of the Income tax Act, 1961 are completed merely on the basis of surmises. In view of the above, the said order passed should be quashed and assessment be annulled.

2. On the facts and circumstances and judicial pronouncements; the reassessment proceedings in pursuance to the notice u/s. 148 of The Income Tax Act, 1961 is in violation of provisions of section 151 of Income Tax Act,

1961. Therefore, such assessment is erroneous on facts and bad in law and assessment be annulled.

3. On the facts and circumstances and judicial pronouncements; Ld. CIT(A) has without providing proper show cause notices and without providing proper opportunity of hearing to the appellant passed the CIT(A) order. Therefore such order is erroneous on facts and bad in law and appellant be allowed proper opportunity of hearing.

4. On the facts and circumstances and judicial pronouncements; Ld. CIT(A) has erred in confirming the addition of Rs. 14,30,939/- u/s 69C without considering the proper facts. Such addition of income is bad in law & erroneous in facts and therefore liable to be deleted.

5. Your appellant craves to add, alter, or amend any of the grounds of appeal on or before the date of hearing of appeal.”

2. Brief facts of the case are as under:-

The assessee is a resident individual who filed the return of income for the year under consideration on 24/07/2012. Subsequently, on or around 31/03/2018, the assessee received a notice issued under section 148 of the Act. In response thereto, the assessee, vide letter dated 18/04/2018, requested the Ld. Assessing Officer (AO) to treat the original return of income as the return filed in response to the said notice and also sought a copy of the reasons recorded for reopening of the assessment. It is submitted that thereafter no communication was received from the Ld. AO until around 19/01/2019, when the assessee was served with the assessment order passed under section 143(3) read with section 147 of the Act.

It is submitted that In the said assessment order, the Ld. AO recorded that a notice under section 143(2) was issued on 31/03/2018, and that the reasons recorded for reopening were communicated to the

assessee vide letter dated 15/10/2018. However, the Ld.AR contends that the assessee neither received the notice under section 143(2) nor the recorded reasons for reopening was ever served upon him. The Ld.AR submitted that the assessee further pointed out that while at one place in the assessment order it is mentioned that the assessee did not file a return of income in response to the notice issued under section 148, at another place the Ld.AO himself has acknowledged that the assessee filed response vide letter dated 18/04/2018.

The Ld.AR submitted that, upon receipt of the assessment order, the assessee undertook inspection of the assessment records. According to the assessee, during the course of such inspection it was noticed that the notice issued under section 148 was not preceded by the approval of the appropriate authority, as stated in the notice, and further that no copy of the recorded reasons for reopening was available on record. He submitted that neither a copy of the notice issued under section 143(2), nor any proof of service thereof was available on record. It has also been submitted that though the order sheet mentioned issuance of notices under section 142(1) dated 04/09/2018 and 05/11/2018, the assessee did not receive any such notices and no proof of service thereof was found on record.

The Ld.AR submitted that the assessment order states that notices under section 133(6) were issued on 14/12/2018 to the Branch Managers of IDBI Bank and SBI. However, according to the assessee, no such notices, proof of service thereof, or corresponding entries in

the order sheet were found during the inspection of the assessment records.

The Ld.AR submitted that the Ld.AO proceeded to make an addition of ₹14,30,939/- under section 69C of the Act on account of alleged premium paid on two insurance policies issued by Birla Sun Life Insurance Company, without granting the assessee adequate opportunity of being heard.

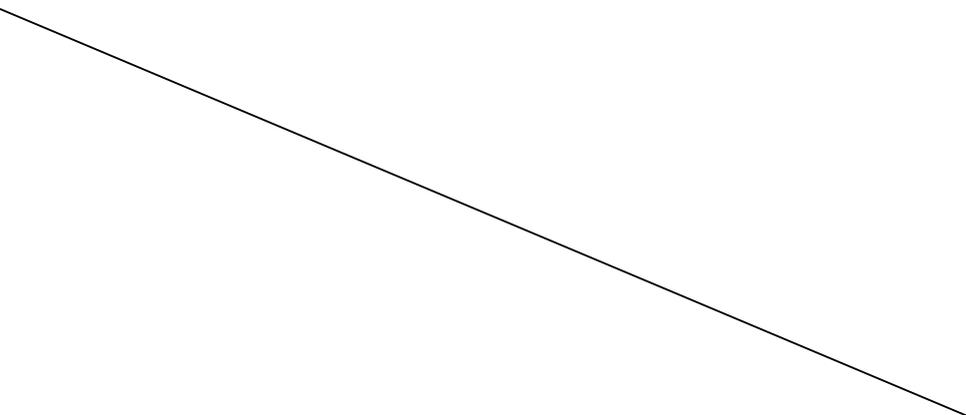
Aggrieved by the order of the Ld. CIT(A), the assessee preferred an appeal before the Ld. CIT(A).

3. It was submitted before the Ld.CIT(A) that the assessee had intimated in Form No. 35 that all communications were to be sent in physical mode. However, the Ld.CIT(A), after issuing three notices to the assessee through email, dismissed the appeal for non-prosecution.

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the *Tribunal*.

4.1. At the outset, the Ld. AR submitted that there is a delay of 229 days in filing the present appeal before the *Tribunal*. An application seeking condonation of delay has been filed along with an affidavit of the assessee in support of the same, which is reproduced hereunder for ready reference:-

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Petititon for condonation of delay:-

Date: 28th November, 2025

From,

Mr. BHARAT MAMANIA

A/701 Olympia Tower , N M Joshi Marg,

Byculla, Mumbai - 400013

To,

The Assistant Registrar,

Income-Tax Appellate Tribunal,

M.K. Marg,

Mumbai - 400020

Ref: **Appeal against order passed by Ld. CIT(A) dated
26.02.2025 in case of Mr. BHARAT MAMANIA**

Assessment Year: 2012-13

Sub: **Petition to condone the delay of 229 days in filing of
appeal.**

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Dear Sir,

The Applicant prays that the delay of 229 days in filing the appeal may be condoned on the basis of following facts and submissions:

1. The Appellate order passed by the Ld. CIT(A), Mumbai was dated on 26.02.2025 and is presumed to be served on 26.02.2025.
2. Physical Copy of CIT(A) Order was never received by me.
3. It was only when recovery notice u/s 226 dt. 13.10.2025 was served to me on 17.10.2025, it came to my knowledge that some order has been passed against me.

4. Once I received the above notice, said notice was given to our CA for appropriate action.
5. Our CA then downloaded the CIT Appeal Order from the system and informed me about the CIT Appeal Order being passed without any opportunity of hearing to me.
6. In Form 35, I had specially mentioned 'No' against question 'Whether notices/ communication may be sent on email?'. That means, I had specifically asked to provide me physical notices for taking further action as I am not well versed the Digital Framework.
7. After perusing the said Order, it was suggested to me to file the appeal before the Hon'ble Appellate Tribunal against the said order passed by the Ld. CIT(A). Draft of appeal to be filed before the Hon'ble Appellate Tribunal was also given to me.
8. Since the notices of CIT(A) were sent on mail, it remained unreplyed.
9. I immediately signed the appeal memo and thus the appeal came to be filed before the Hon'ble Appellate Tribunal on 09/12/2025. However, by that time the appeal was barred by the limitation period of 229 days.
10. I submit that I have co-operated with the Department in the completion of his tax related matters for all the earlier and subsequent assessment years. There is no malafide intention in not filing the present appeal on time. Hence, your honours may condone the delay of _____ days in filing the appeal. The Applicant relies on the decision of Hon'ble Supreme Court in the case of **Improvement Trust vs. Ujagar Singh, Civil Appeal No. 2395 of**

2008 dated 9th June, 2010. In this case Hon'ble Supreme Court at page 6 in Paragraph 1, 2 & 3 has observed as under:

- (i) While considering an application for condonation of delay no strait-jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. **From the conduct, behavior and attitude of the appellant it cannot be said that it had been absolutely callous and negligent in prosecuting the matter;**
- (ii) Justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it of on such technicalities and that too at the threshold;
- (iii) **Unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned.** In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Apart from the above, **the appellant would not have gained in any manner whatsoever, by not filing the appeal within the period of limitation.**

11. The Applicant relies on the observation of the Apex Court in the case **167 ITR 471 (SC) Collector, Land Acquisition Vs. Katijl**

"When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay."

12. The Applicant relies on the Hon. Bombay High Court in the case **Vijay Vishin Meghani v. DCIT (2017) 86 taxmann.com 98** wherein Hon. High Court has condoned the delay of 2984 days.

"We find from paragraph 13 of the order, but for this relevant factors and tests, everything else has been brought into the adjudication by the Tribunal. The Tribunal though aware of these principles but possibly carried away by the fact that the delay of 2984 days is incapable of condonation. That is not how a matter of this nature should be approached. In the process the Tribunal went about blaming the assessee and the professionals and equally the Department. To our mind, therefore, the Tribunal's order does not meet the requirement set out in law. The Tribunal has completely misdirected itself and has taken into account factors, tests and considerations which have no bearing or nexus with the issue at hand. The Tribunal, therefore, has erred in law and on facts in refusing to condone the delay. The explanation placed on affidavit was not contested nor we find that from such explanation can we arrive at the conclusion that the assessee was at fault, he intentionally and deliberately delayed the matter and has no bona fide or reasonable explanation for the delay in filing the proceedings." (Paragraph 21)

13. The Appellant further seeks kind attention of the Hon'ble Bench to the observations of the Hon'ble Kerala High Court in the case of **Vasu & Co. Vs. State of Kerala (2001) 124 STC 124 (Ker.)**.

"We are of the view that it is not necessary in all cases to give evidence regarding the delay in filing appeals. The affidavits are documents of evidence. On the basis of the affidavits, if the Court is satisfied that sufficient explanation has been given for condoning delay, then the affidavit can be accepted as evidence.

If proof of what is stated in the affidavit is insisted on, that will prolong the litigation. Here is a case where the Assessee is aggrieved by the orders of the assessing authorities. According to him, he has been directed to pay tax which he was not bound to pay and on the ground of delay the Tribunal has shut the doors against him. Of course, if the Petitioner had been negligent or irresponsible, the Court cannot come to his succour. Here, we find some truth in what the Petitioner had stated in so far as he has approached this Court by filing original Petition. It would have been better, if some evidence was given regarding his case that the particular advocate did not file appeals. But the court can take judicial notice of the difficulty in getting such affidavits".

14. In view of the above submissions, the Applicant prays that your honor may to be pleased to consider the facts of the case and condone the delay of 229 days and oblige.

Thanking you,

Yours faithfully,

B.T. Mamania

(Mr. BHARAT MAMANIA)

Affidavit in support of condonation petition:-

महाराष्ट्र MAHARASHTRA

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EG 995552

**AFFIDAVIT**

विनायक जाधव

I, **Mr. BHARAT MAMANIA**, aged 62 years, Son of Shri Thakarshi Mamania residing at A 701 Olympia Tower, N M Joshi Marg, Byculla West, Mumbai 400011, do hereby on solemn affirmation state as under:-

1. That The Appellate order passed by the Ld. CIT(A), Mumbai was dated on 26.02.2025 and is served on 26.02.2025.
2. Physical Copy of CIT(A) Order was never received by me.



3. It was only when recovery notice u/s 226 dt. 13.10.2025 was served to me on 17.10.2025, it came to my knowledge that some order has been passed against me.
4. Once I received the above notice, said notice was given to our CA for appropriate action.
5. Our CA then downloaded the CIT Appeal Order from the system and informed me about the CIT Appeal Order being passed without any opportunity of hearing to me.
6. In Form 35, I had specially mentioned 'No' against question 'Whether notices/ communication may be sent on email?'. That means, I had specifically asked to provide me physical notices for taking further action as I am not well versed the Digital Framework.
7. Since the notices of CIT(A) were sent on mail, it remained unreplied.
8. After perusing the said Order, it was suggested to me to file the appeal before the Hon'ble Appellate Tribunal against the said order passed by the Ld. CIT(A). Draft of appeal to be filed before the Hon'ble Appellate Tribunal was also given to me.
9. I immediately signed the appeal memo and thus the appeal came to be filed before the Hon'ble Appellate Tribunal on 09/12/2025. However, by that time the appeal was barred by the limitation period of 229 days.



10. That, the delay for filing the present appeal is not because of any malafide intention. Hence, Your Honours may be pleased to condone the delay in filing the present appeal and the appeal may be decided on merits of the case.

11. That, whatever is stated hereinabove and in the Condonation Petition are true to the best of my knowledge.

Solemnly affirmed at Mumbai)
This 3rd day of December, 2025)

B. T. Mamania

DEPONENT

Before me

Identified by me

ATTESTED BY ME

M.M. Salooja
3-12-2025
MRS. MANPREET KAUR SALOOJA
B.Sc. (Hons.), A.L.M., Dist. Journalism
NOTARY PUBLIC OF INDIA
Regd. No. 5438
Office No. 37, Aashray Bhag No. 4,
Opp. to Kumbh Stadium,
Behind Pata Maternity Hospital,
Narba Wada Road, Park, Mumbai-400015
Mob. - 9820173967



B. T. Mamania.





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E-Aadhaar Letter

नोंदणी क्रमांक/Enrolment No.: 1008/53008/07285

BHARAT T. MAMANIA (भारत टी. मामनिया)
S/O T. Mamania, Flat No. 701, A - Wing, Olympia Tower, N. M. Joshi Marg, Near Byculla Station, Baki Adda, Byculla (West), Mumbai, Mumbai, Maharashtra - 400011

मूचना

- आधार ओळखीचे प्रमाण आहे, नागरीत्वचे नाही.
- ओळखीचे प्रमाण ऑनलाईन अधिपतीकरण द्वारा प्राप्त करा.
- हे इलेक्ट्रॉनिक प्रक्रिये द्वारा तयार झालेले एक पत्र आहे.

मूचना

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- ओळखीचे प्रमाण ऑनलाईन अधिपतीकरण द्वारा प्राप्त करा.
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5687 3885 5264



आधार-सामान्य माणसाचा अधिकार

Digitally signed by **Bharat T. Mamania**
Date: 2015.01.04 10:00:00 +05'30'

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- आधार पत्रटी आपण एकाच नावांवर नोंदणीची आवश्यकता आहे.
- मूल्या आपल्या तयारवा मोबाइल नंबर व ई-मेल पत्ता नोंदवा. यामुळे आपल्या विविध सुविधा प्राप्त करण्यासाठी मदत मिळेल.

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पुरुष / MALE




भारतीय विशिष्ट पहचान प्राधिकरण
UNIQUE IDENTIFICATION AUTHORITY OF INDIA

पत्ता:
Address:
S/O T. Mamania, Flat No. 701, A - Wing, Olympia Tower, N. M. Joshi Marg, Near Byculla Station, Baki Adda, Byculla (West), Mumbai, Mumbai, Maharashtra - 400011

5687 3885 5264

आधार-सामान्य माणसाचा अधिकार Aadhaar-Aam Admi ka Adhikar



MRS. M. M. SALOOJA
R. T. Mamania

4. From the affidavit filed by the assessee, there does not arise any *malafide* intention on behalf of assessee for not filing the present appeals before this *Tribunal*.

4.1. In our view, the assessee has made out a reasonable cause for the delay that is caused in filing the present appeal before this *Tribunal*. Nothing to establish any contrary intention has been filed by the revenue before this *Tribunal*. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions.

4.2. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

- 1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.*

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

4.3. Considering the submissions by both sides and respectfully following the observation by *Hon’ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal as it is not attributable to the assessee. In any event, though the procedural law pertaining to the limitation has been drafted to construe it strictly, the fact remains that, considering such technicalities will not advance the cause of justice.

4.4. We take support from the observations of Justice Krishna Iyer wherein he has quoted at various occasion while dealing with technicalities that “any interpretation that alludes substantive justice is not to be followed and that substantive justice must always prevail over procedural technicalities”. Even *Hon’ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 has laid down a ratio of similar principles. Respectfully following the thoughts propounded by Late *Hon’ble Justice Krishna Iyer*, as well as various decisions of *Hon’ble Supreme Court* on similar issues, we condone the delay caused in filing the present appeals before this *Tribunal*.

5. On merits, it is observed that the Ld. CIT(A) has not adjudicated the issue on merits, as the assessee did not receive the notice in the physical mode, as opted for by him in Form No. 35. Considering that the assessee is a senior citizen and may not be fully conversant with

the online mode of communication, we deem it appropriate, in the interest of justice, to restore the matter to the file of the Ld. CIT(A). The Ld. CIT(A) shall issue notice to the assessee both in physical form as well as through the online portal and grant adequate opportunity of being heard. The Ld.CIT(A) shall also examine the assessee's contention regarding the alleged discrepancies in the issuance and service of statutory notices and the recording of reasons for reopening, with reference to the assessment records. Thereafter, the Ld.CIT(A) shall pass a reasoned and speaking order on merits in accordance with law after considering the evidence that may be furnished by the assessee.

Accordingly, grounds raised by assessee stands partly allowed for statistical purposes.

In the result, appeal filed by assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 13/03/2026

Sd/-

**(BEENA PILLAI)
Judicial Member**

Mumbai
Dated: 13/03/2026
SC Sr. P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

(Asstt. Registrar)
ITAT, Mumbai