



**IN THE INCOME TAX APPELLATE TRIBUNAL  
"J" BENCH, MUMBAI  
BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER  
MS. PADMAVATHY S, HON'BLE ACCOUNTANT MEMBER**

ITA No. 175/MUM/2025 (AY: 2014-15)

(Physical hearing)

<b>RAMEL AJIT SINGH</b> Building No. A6, 3 <sup>rd</sup> Floor SWAGAT CHS, Plot No. 14 Nerul (W), Navi Mumbai-400706 Maharashtra  <b>PAN. BAWPS1380N</b>	Vs	Income Tax Officer, Ward No.28(2)(1), Vashi, Mumbai.
Appellant		(Respondent)
Assessee Represented by	:	Shri S. R. Lodhe Advocate
Department Represented by	:	Shri Asif Karmali, Sr DR
Date of Conclusion of hearing	:	03.04.2025
Date of Pronouncement of Order	:	08.05.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre (NFAC) / CIT(A) dated 17.12.2022 for the A.Y. 2014-15. Though the assessee has raised multiple grounds of appeal, which is not in accordance with Income Tax (Appellate Tribunal) Rules-1963. Though, the assessee again vide application filed on 18.02.2015 has raised various additional ground of appeal. However, in our considered view, the substantial ground of appeal relates to the addition of Rs.3,53,884/- and validity of reopening under section 147. Thus, on the basis of facts of the present case and the submissions of the parties, the grounds of appeal filed by the assessee is reframed as under: -

*"(1) Whether on the facts and on the circumstances of the case, the AO was justified in reopening of the case.*

*(2) Whether on facts and on circumstances, the Id. CIT(A) erred in confirming the addition of Rs.3,53,884/-."*

2. Brief facts of the case are that, assessee is an individual and allegedly engaged in repairing and maintenance of automobiles in the name of "Raju Auto Garage", filed his return of income for the A.Y. 2014-15 on 20.02.2015 declaring income of Rs.1,91,350/-. Initially, return was not selected for scrutiny. Subsequently, case of assessee was reopened under section 147 of the Income Tax Act, 1961. Case was reopened on the basis of information received from ITO, Ward-27(1)(3), Mumbai that assessee is one of the members in Himachal Mitra Mandal Co-op Credit Society and during the year under consideration he made cash deposits of Rs.5,87,678/- in his bank accounts. Notice under section 148 of the Act dated 31.03.2021 was issued to the assessee. The Assessing Officer issued show-cause notice to the assessee through ITBA Portal for seeking reply of assessee about source of cash deposits and copy of bank statements of all other bank accounts. The Assessing Officer recorded that assessee furnished bank statements of SBI, balance sheet, profit and loss account. However, no detailed written submissions or source of cash deposits with M/s. Himachal Mitra Mandal Co-op Credit Society was furnished. The Assessing Officer after serving final show-cause notice, and in absence of any reply about source of cash deposits with Himachal Mitra Mandal Co-op Credit Society treated the entire cash

deposits of Rs.5,87,678/- as unexplained cash credit. The Assessing Officer passed draft assessment order on 24.01.2022 by proposing such addition. In response to draft assessment order, the Assessing Officer recorded that the assessee furnished bank statements, computation of income, profit and loss account of his business and explained that he has declared income of Rs.1,91,350/-. Assessee disclosed cash deposits in Bank of India of Rs. 13,580/-, Rs. 97,704/- in State Bank of India and Rs. 3,80,445/- in M/s. Himachal Mitra Mandal Co-op Credit Society. The assessee submitted that he has also received interest in M/s. Himachal Mitra Mandal Co-op Credit Society on FDR of Rs. 19,905/- and income from house property of Rs. 33,600/-. The Assessing Officer by considering such details held that assessee has returned income of Rs.1,99,750/- while total receipt including cash deposits in bank, interest and income from house property is of Rs.5,45,230/-. The Assessing Officer after reducing the taxable income declared by the assessee from the total receipt of Rs.5,45,234/-, workout a figure of Rs.3,53,884/- (545234 - 191350) and made addition thereof in the assessment order dated 24.02.2022, passed under section 144B rws 147.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before Id.CIT(A). Before Id.CIT(A) the assessee filed his detailed written submissions. The submissions of the assessee are recorded in Para No. 4 of order of Id.CIT(A). The assessee in his submissions submitted that he is carrying on bussing of Auto Garage in the name of "Raju Auto Garage" and doing repair and maintenance of auto and automobiles and bikes. He filed

return of income under section 139 of the Act declaring taxable income of Rs.1,91,350/- by showing total business receipt of Rs.4,72,300/- from his business. During assessment, due to Covid-19 pandemic he was unable to upload return in response to notice issued on 18.11.2021 and 15.12.2021. However, in response to notice dated 29.12.2021 the assessee submitted documents alongwith computation of income, profit and loss account from business showing business income, which was not considered by the Assessing Officer and completed the assessment by determining total assessed income of Rs.5,45,234/- and thereby made addition of Rs.3,53,884/- against the original returned income of Rs.1,91,350/-. While making such assessment the Assessing Officer made addition of closing balance in Bank of India of Rs.97,704/-, closing balance in State Bank of India of Rs.13,580/- and closing balance in Himachal Mitra Mandal Co-op Credit Society of Rs.3,80,445/-, interest on Fixed Deposits (FD) from Himachal Mitra Mandal Co-op Credit Society of Rs. 33,600/- total of which were Rs. 5,45,234/-. From total receipt of Rs. 545,234/- the Assessing Officer reduced the net taxable income offered by the assessee, thereby made addition of Rs.3,53,884/-. The assessee further stated that he is in the business of repairing and maintenance of bike and auto at Shop No.21, Plot No. 76, sector 17. J.K. Chambers, Vashi, Navi Mumbai. In the business the assessee getting 100% cash from his repair and maintaining services. Such amount was deposited in cash in his bank accounts. The assessee also earning rental income @Rs.4,000/- per month thus aggregating to Rs.48,000/- from residential property and let out of Mr. Suresh Singh Guleria, PAN and address was

provided. The assessee stated that Assessing Officer added all closing balances of all the banks as on 31.03.2014 along with interest on FD and receipts from house property. The Assessing Officer adopted casual approach while making such addition. The assessee prayed for deleting such addition. During assessment the assessee made request for video conference to explain various documents, which was not considered in draft assessment. Such video conference / opportunity of hearing was not allowed.

4. The Id.CIT(A) after considering the submissions of assessee, gave his finding in Para Nos. 5 & 6 of his order. The Id.CIT(A) in Para No. 6.2 of his order recorded that assessee is contesting the addition made by the Assessing Officer on the ground that addition is made without considering the fact that assessee was having gross income of Rs.8,42,400/- from his business out of which cash was deposited in various bank accounts. In the written submissions, the assessee stated that assessee disclosed gross total receipt from "Raju Auto Garage" of Rs.4,72,300/- and net taxable income of Rs.1,99,750/-, so there is no question of unexplained cash credit under section 68 of the Act which the Assessing Officer made. The assessee prepared revised working after receipt of notice but unable to upload due to technical ground. The assessee has filed unsigned balance sheet as on 31.03.2014 and computation of total income as on 31.03.2014. The Id.CIT(A) in Para No. 6.4 of his order further noted that in the computation of total income filed during appeal, assessee disclosed taxable income of Rs. 3,03,353/- whereas in the return of income filed on 20.02.2015 assessee

disclosed total income of Rs.1,91,350/-. In the computation of total income filed during the Appellate Proceedings for the year ended, the assessee has shown income from business of Rs.2,58,240/- i.e., net business income from Automobile industry as Rs.2,58,240/-. The Id.CIT(A) held that the assessee has not filed any evidence in support of gross business income of Rs.8,42,400/- and no cash flow statement explaining the source of the cash deposited in the bank account, on the basis of such observations, Id.CIT(A) upheld the addition made by the Assessing Officer. Further, Aggrieved the assessee has filed present appeal before the Tribunal.

5. We have heard the submissions of Learned Authorised Representative (Ld.AR) of the assessee and Learned Senior Departmental Representative (Sr.DR) for the revenue. Ld.AR of the assessee also filed short written synopsis on our directions. During the hearing of the appeal, the Id AR of the assessee fairly submitted that impugned order by Id CIT(A) was passed on 17.12.2022, however, this appeal before Tribunal was filed on 09.01.2025, thus there is delay of two year and thirty days. The assessee has already filed application for condonation of delay in the form of affidavit. The Id AR of the assessee submits that delay in filing appeal is neither intentional or deliberate. The assessee is a man of small means and was not aware of technicalities of tax laws and was dependent on his consultant. His consultant took time to file appeal before Tribunal. The assessee is really interested in persuing his case on merit and would suffer prejudice if the delay in filing appeal is not condoned. In support of his submission, the Id AR of the assessee relied on

the decision of Mumbai Tribunal in Mizuho Corporate Bank Vs ADIT in ITA No. 3282/Mum/2009 dated 26.03.2014.

6. On merit of the case, the Id AR of the assessee submits that the assessee was engaged in the repairing of two wheelers and Auto in the name of "Raju Auto Garage" in Navi Mumbai, copy of trade licence under Shop & Establishment Act, issued by Municipal Corporation Navi Mumbai is placed on record. During the year under consideration, the assessee earned gross receipt of Rs.8,42,400/- from repairs and maintenance of Auto and two wheelers, though, while filing return of income under section 139 on 20.02.2015, the assessee has shown gross income of Rs.1,99,750/-. Case of assessee was reopened on the basis of information about cash deposits with Himachal Mitra Mandal Co-op Credit Society which was more than the income reported. It was informed that an amount of Rs.5,87,678/- deposited in Himachal Mitra Mandal Co-op Credit Society. The Assessing Officer treated such deposited as unexplained cash deposits under section 68 of the Act. On the service of draft assessment order, the assessee filed his objections / explanation and also furnished bank statements, computation of total income, profit and loss account and balance sheet. The assessee also filed revised computation of total income. In the revised computation of total income, the assessee has shown gross business receipt of Rs. 8,42,400/- from his automobile work and after debiting expenses of Rs. 5,84,160/-, the assessee has offered business income, copy of revised computation of total income is filed on record. In the revised statement of total income, the assessee has shown business

income of Rs.2,58,240/-, income from house property of Rs.33,600/- and from other sources at Rs.26,289/- i.e., total of Rs.3,18,129/-. The assessee after claiming deduction under Chapter VI-A of Rs.14,776/- offered taxable income at Rs.3,03,353/-. The assessee also paid tax of Rs.16,240/-. Revised computation of income and tax receipt is also placed on record. The total deposit with Himachal Mitra Mandal Co-op Credit Society was only Rs.3,80,445/-only, which was part of receipt of two-wheeler and auto repair and maintenance business. The assessee while filing revised computation, in response to notice under section 142(1) of the Act included the said receipt and has paid tax thereon. Thus, before finalizing the assessment order, the assessee has paid more tax than the liability. Once the assessee has already considered all the receipts in computing the total tax liability and has paid the tax thereon, therefore no addition on account of cash deposits to be made. The Id.CIT(A) confirmed the action of Assessing Officer without appreciating the fact.

7. On the other hand, Learned Senior Departmental Representative (Sr.DR) for the revenue supported the orders of lower authorities. Against the plea of condonation of delay, the Id Sr DR for the revenue submits that the assessee is relying on self-serving story. The delay in filing appeal is inordinate and may not be condoned. On merits of the addition, the Sr.DR for the revenue submits that no supporting documents to substantiate the cash deposit with Himachal Mitra Mandal Co-op Credit Society were furnished. Since the assessee failed to substantiate the cash deposits therefore, the Assessing



Officer added such deposit under section 68 of the Act. The assessee took the plea of business receipt, no evidence of such business activity was filed by the assessee. The assessee filed revised computation of total income without filing revised return of income. The Assessing Officer has no power to accepted revised computation of income in absence of revised return of income.

8. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. Firstly, we shall consider the plea of Id AR of the assessee on condonation of delay. The Id CIT(A) passed the impugned order on 17.12.2022. However, the present appeal was filed before tribunal was filed on 09.01.2025. We find that registry of Tribunal, while issuing the defect memo to the assessee, specific defect with the regard to delay in filing appeal was not issued, though, it was pointed out that date of communication/ service of order is not correctly not filled. In response to such defect the assessee filed his response and accepted that communication of impugned order as on 17.12.2022. Thus, in such circumstance, the assessee has filed application for condonation of delay in filing present appeal. Before us, the Id AR of the assessee vehemently urged that the assessee is a man of small means and was not aware of technicalities of tax laws and was dependent on his consultant. His consultant took time to file appeal before Tribunal. The assessee is really interested in persuing his case on merit and would suffer prejudice if the delay in filing appeal is not condoned. Though, we find that the arguments taken by the assessee are not

much convincing, yet keeping in the principal laid down by Hon'ble Apex Court in Land Acquisition Collector Vs Mst Katiji & Others 167 ITR 471 SC, that when technical consideration and cause of substantial justice are pitted against each other, cause of substantial justice deserves to be preferred. It is also settled that while considering the plea of condonation of delay, the conduct of the party is also important, if the parties' conduct is bonafide and/or not mala fide. Thus, considering the facts of the present case, we find that the assessee is interested in pursuing his case and there is no mala fide intention of the assessee in filing the appeal belatedly, hence delay in filing appeal is condoned. Now advertent to the merits of the case.

9. We find that case of assessee was reopened on the basis of information with the Assessing Officer that there were cash deposits of Rs.5,87,678/- with Himachal Mitra Mandal Co-op Credit Society. The assessing officer after recording reasons of reopening and serving notice under section 143(2)/ 142 proposed to make addition of such cash deposits by taking view that the assessee has not offered any explanation about the nature and source of such deposits. On service of draft assessment order, the assessee submitted that there were total cash deposits in Himachal Mitra Mandal Co-op Credit Society of Rs.3,80,445/-. Apart from such deposits, the assessee also earned interest from Himachal Mitra Mandal Co-op Credit Society of Rs. 19,905/-, income from house property of Rs.33,600/- and deposit in Bank of India of Rs. 13,580/- and deposit in State Bank of India of Rs.97,705/-, thus aggregating of total receipt of Rs.5,45,234/-. On considering such plea, the Assessing

Officer took his view that the assessee shown taxable income of Rs.1,91,350/- , therefore, Rs.3,53,884/- (Rs.54,5,234/- – Rs.1,91,350/-) is undisclosed income of assessee. Though, taxing the entire deposits or total receipt is not proper, as all receipt cannot be income, when the assessee took the plea that he was doing some business activities. We find that the Assessing Officer while making addition of Rs. 3,53,884/- has accepted that cash credit in Himachal Mitra Mandal Co-op Credit Society was of Rs. 3,80,445/- only.

10. We find that before Id.CIT(A) the assessee apart from other submissions, assessee submitted that he had already filed revised computation of income and paid tax of Rs.16,240/-. The assessee in revised computation of income has considered business receipts from automobile work of Rs.8,42,400/- which includes Rs.3,80,445/- cash deposit in Himachal Mitra Mandal Co-op Credit Society. The assessee claimed expenses of Rs.5,84,160/- in the automobile business thereby offered business income of Rs.2,58,240/-. The assessee also offered income from house property of Rs.33,600/- and other income on account of interest from FD in savings bank of Rs.26,289/- and after claiming deduction under Chapter VI-A of Rs.14,776/- offered taxable income of Rs.3,03,350/- on which self-assessment tax was paid at Rs.16,240/-. We find that Id.CIT(A) not accepted such plea of assessee by taking view that assessee has not filed any evidence of gross business income of Rs.8,42,400/- and no cash flow statement about cash deposits is filed. As per assessee, the assessee has already included all the amounts of cash deposits with Himachal Mitra Mandal Co-op Credit Society in the revised

computation of income. On the other hand, Id.CIT(A) confirmed the action by taking view that cash flow statement and evidence of gross business receipt is not furnished.

11. It is settled position under income tax proceedings that the Assessing Officer has no authority to accept revise computation of income without filing revised return by the assessee, however, such restriction is not applicable on the discretion and power of appellate authorities. The Id CIT(A) not accepted the revised computation of income by simply taking view that the assessee has not filed any evidence of gross business income. Considering the overall facts and circumstances of the case and the fact that the assessee is engaged in the repairing of two wheelers in the name of "Raju Auto Garage", copy of trade licence under issued by Municipal Corporation Navi Mumbai is available on record. It is pertinent to mention here that both the Assessing Officer and the Id CIT(A) have not rejected the gross receipts declared by the assessee. The assessee in the revised computation has declared gross receipts of Rs. 8,42,400/- and has also paid tax on the same. Given the nature of business of the assessee there is merit in the submission that the cash deposited is out of the gross receipts and that once gross receipts are disputed then no addition is sustainable under section 68 of the Act. In view of these discussions and considering the facts peculiar to the assessee we hold that the Id CIT(A) is not correct in sustaining the addition without considering the revised gross receipts declared by the assessee and the tax paid thereon. In the result, the substantial ground No.1 of the appeal is allowed.

12. So far as ground relates with the reopening is concerned, we find that the assessing officer has sufficient information of making belief that income of the assessee has escape assessment. Neither the assessee objected at the time of reopening nor file return of income in response to notice under section 148. Rather, the assessee himself offered amount of cash credit in the undisclosed bank account for taxation. In the result, the ground of appeal related with the reopening is dismissed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 08<sup>th</sup> May, 2025.

Sd/-  
**PADMAVATHY S**  
**ACCOUNTANT MEMBER**

Sd/-  
**PAWAN SINGH**  
**JUDICIAL MEMBERS**

MUMBAI, DATED: 08.05.2025

*Giridhar, Sr.PS*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai