INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: H (SMC)

BEFORE SMT. BEENA PILLAI, HON'BLE JUDICIAL MEMBER
AND SHRI JAGADISH, HON'BLE ACCOUNTANT MEMBER

<table>
<tr><td colspan="3">ITA 555/MUM/2026
निर्धारण वर्ष/Assessment Year: 2011-12)</td></tr>
<tr><td>MR. VIKAS KAILASHCHANDRA GUPTA
11D, TWILITE COSMOS HORIZEN NEAR BLUE STAR COMPANY POKHRAN ROAD,, THANE-400601, MAHARASHTRA</td><td rowspan="2">Vs.</td><td>INCOME TAX OFFICER WARD 1(5)
1ST FLOOR, MOHAN PLAZA WAYLE NAGAR KALYAN MUMBAI-421301, MAHARASHTRA</td></tr>
<tr><td>अपीलार्थी Appellant</td><td>प्रत्यर्थी Respondent</td></tr>
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<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>AAXPG6298H</td></tr>
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<tr><td colspan="2">अपीलार्थी द्वारा/Appellant represented by:</td><td>Shri. Pranav Phadke, Adv.</td></tr>
<tr><td colspan="2">प्रत्यर्थी द्वारा/Respondent represented by:</td><td>Shri. Pravin Salunkhe, Sr. DR</td></tr>
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सुनवाई की तारीख / Date of conclusion of hearing:	**30-Jun-2026**
घोषणा की तारीख / Date of pronouncement:	**04/08/2026**

आदेश / ORDER

PER SMT. BEENA PILLAI, JUDICIAL MEMBER:

Present appeal filed by the assessee arises out of the order dated 29/09/2025 passed by Ld. Commissioner of Income Tax (Appeals), Agra [hereinafter referred to as "Ld.CIT(A)"] for AY 2011-12, on the following grounds of appeal:-

> *"1) The Ld. CIT (A) erred in not considering the fact that the impugned notice us. 148 was illegal since the reasons recorded before issuing the same were baseless, and as such, the reassessment proceedings in pursuance thereof is vitiated.*

2) The Ld. CIT (A) also failed to consider that the impugned order is passed mechanically by the Ld. Assessing Officer without affording an opportunity to the appellant to defend his case, and as such, the same is liable to be annulled on account of non application of mind and violation of principles of natural justice.

3) The Ld. CIT (A) also failed to consider that the appellant was never given any opportunity to cross-examine the person who made the statement against the appellant, much less, the alleged material was never provided to him, and as such, the same is violation of principle of natural justice.

4) The Ld. CIT (A) lost sight of the fact that any statement made by and person u/s. 132(4) cannot be used against any third person and therefore the impugned addition based thereon made by the Ld. Assessing Officer is illegal.

5) The aforesaid issues is already covered under the decision of the Hon'ble Supreme Court in case of CIT Vs P.V Kalyansundasram 164 Taxman 78(SC).

6) The Ld. CIT (A) erred in overlooking the decision of the Hon'ble ITAT "SMC" Bench Mumbai, in case of Monika A. Gupta Vs Income Tax Officer Ward 1(2) Kalyan ITA No. 5561/Mum/2018, a family member of the appellant.

7) The Ld. CIT (A) thus erred in completely disregarding the decision of Hon'ble Supreme Court in the aforesaid judgment i.e. CIT Vs P.V Kalyansundasram 164 Taxman 78(SC) and the Hon'ble ITAT "SMC" Bench Mumbai in Monika A. Gupta Vs Income Tax Officer Ward 1(2) Kalyan ITA No. 5561/Mum/2018 by making not even whisper of both the said decisions in the entire order.

8) It is therefore prayed that the Hon'ble Members may be pleased to delete the impugned addition amounting to Rs. 724000/- in A.Y. 2011-12 or in alternative the Hon'ble Members may be pleased to pass any such other order or orders in favor of the appellant in the interest of justice."

2. At the outset, it is noticed that there is a delay of 22 days in filing the present appeal. The assessee has filed a petition for condonation of delay supported by an affidavit explaining the reasons for the delay. It has been submitted that the delay occurred due to circumstances beyond the control of the assessee, inter alia, on account of the serious illness and prolonged medical treatment of the counsel who was handling the tax matters of the assessee, coupled with the consequential delay in communication and availability of the relevant records. It has been specifically averred that the delay was neither deliberate nor intentional and that the assessee acted with due diligence immediately upon becoming aware of the necessity to file the appeal.

2.1. The Ld. DR, though relied upon the orders of the authorities below, could not bring any material on record to demonstrate that the explanation furnished by the assessee lacks bona fides or that the delay was occasioned due to any deliberate negligence or mala fide conduct.

2.2. It is a settled proposition of law that while considering an application for condonation of delay, the approach of the Court should be liberal where sufficient cause is shown and no mala fides or deliberate inaction can be attributed to the litigant. The *Hon'ble Supreme Court* in *Collector, Land Acquisition v. Mst. Katiji & Ors.* reported in *[(1987) 167 ITR 471 (SC)]* has held that a pragmatic and justice-oriented approach should be adopted in matters relating to condonation of delay and that substantial justice should prevail over technical considerations. Similarly, in *N. Balakrishnan v. M. Krishnamurthy* reported in *[(1998) 7 SCC 123]*, the *Hon'ble Supreme Court* observed that the length of delay is not material; what is material is the acceptability of the explanation, and unless the delay is attributable to mala fides or deliberate negligence, a liberal approach is warranted.

2.3. In the facts of the present case, the delay is only 22 days, which cannot be regarded as inordinate. The explanation furnished by the assessee appears to be plausible and bona fide. Nothing has been brought on record by the Revenue to rebut the averments made in the condonation petition or to establish that the delay was intentional or motivated by any ulterior purpose. Refusing to condone such a short delay would result in denial of an opportunity to the assessee to have the matter adjudicated on merits, whereas condonation would not cause any prejudice to the Revenue.

2.4. Accordingly, considering the totality of the facts and circumstances of the case and respectfully following the principles laid down by the *Hon'ble Supreme Court* in *Collector, Land Acquisition v. Mst. Katiji & Ors. (supra) and N. Balakrishnan v. M. Krishnamurthy (supra)*, we are satisfied that the assessee has demonstrated sufficient cause for the delay. **The delay of 22 days in filing the appeal is, therefore, condoned, and the appeal is admitted for adjudication on merits.**

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

The assessee is an individual. A search and seizure action u/s 132 of the Act was conducted in the case of the Cosmos Group on 24/09/2014. During the course of the search, the statement of Shri Suraj Parmar, one of the chief promoters of the Cosmos Group, was recorded u/s 132(4) on 26/09/2014, wherein he admitted that cash transactions were undertaken in the sale of flats, shops and offices. Various loose papers and soft data, including Excel sheets, were also found and seized. On examination of the seized material, the Department alleged that the Group was maintaining parallel unaccounted books of account outside its regular books.

3.1. From the seized material, the Ld.AO observed that cash of Rs.14,48,000/- had allegedly been paid on 20/01/2011 towards the purchase of Flat No. 11D in the project "Horizon Twilite", jointly by the assessee and his wife, for a total consideration of Rs.75,16,921/-. Since the property was jointly held, the Ld.AO formed a prima facie belief that 50% of the alleged cash payment, i.e., Rs.7,24,000/-, represented income chargeable to tax that had escaped assessment in the hands of the assessee.

3.1.1. Pursuant to the issuance of notice u/s 148, the assessee, vide letter dated 14/11/2018, requested that the return of income originally filed be treated as the return filed in response to the said notice. Thereafter, reassessment proceedings were initiated by issuing the requisite statutory notices.

3.2. The assessee filed objections challenging the validity of the reopening u/s.148. However, the Ld.AO rejected the objections. After considering the submissions of the assessee, the Ld.AO remained of the view that 50% of the alleged cash payment of Rs.14,48,000/-, amounting to Rs.7,24,000/-, had escaped assessment in the hands of the assessee. Accordingly, the Ld.AO completed the reassessment by making an addition of Rs.7,24,000/- on the basis of the seized material recovered during the search in the case of the Cosmos Group and the statement recorded from Shri Suraj Parmar.

Aggrieved, by the order passed by Ld.AO, assessee preferred appeal before Ld.CIT(A).

4. The Ld.CIT(A) after considering the submissions of assessee confirmed the addition made by Ld.AO.

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

5. The Ld.AR submitted that the addition in hands of the assessee in respect of the alleged on-money has been made without any corroborative material found from the assessee. He submitted that addition is solely made on the statements recorded of the builder. The Ld.AR placed reliance on the decisions of the Co-ordinate Bench of this *Tribunal* in the case of *Mrs. Mopnika Anand Gupta vs. ITO Ward1(2), Kalyan, ITA No.5561/Mum/2018,* wherein there was identical issue was considered by observing as under:-

> *"6. I have heard both the parties and perused the record. I find that the addition for on-money payment has been done in this case without any corroborative material found from assessee. The addition is solely based upon some statement of the builder. Such additions are not sustainable on the touchstone of Hon'ble Supreme Court decision in the case of CIT vs P.V.Kalyanasundasram 164 Taxman 78 (SC). Moreover there is nothing on record to suggest that so called electronic evidence collected by revenue at the builder's office is compliant with the requirement of section 65B of Evidence Act regarding admissibility of electronic evidence. Hence, I set aside the orders of the authority below and direct that the addition be deleted."*

5.1. The Ld.DR on the contrary, relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in light of the records placed before us.

6. The short issue for our consideration is whether the addition of ₹7,24,000/-, being 50% of the alleged cash payment towards purchase of Flat No.11D in the project "Horizon Twilite", can be sustained merely on the basis of the statement recorded from the promoter of the Cosmos Group and the material seized during the course of search conducted in the case of the builder.

6.1. It is an undisputed position that no search was conducted in the case of the assessee before us. Also, no incriminating material evidencing payment of on-money was found either from the possession of the assessee or from his bank accounts, books of account or any other records maintained by him. The entire basis of the addition is the statement recorded under section 132(4) from Shri.Suraj Parmar, one of the promoters of the Cosmos Group, coupled with certain loose papers and electronic data seized from the premises of the builder.

6.2. Though a statement recorded under section 132(4) and material seized during search undoubtedly constitute relevant evidence, the addition in the hands of a third party cannot be sustained merely on the strength of such material unless there exists cogent evidence establishing a nexus between the seized material and the assessee. The burden lies on the revenue to demonstrate, by reliable and corroborative evidence, that the assessee had in fact made the alleged unaccounted payment. Mere entries found in the records of the builder, without independent corroboration from the side of the purchaser, cannot automatically lead to the conclusion that the purchaser actually paid on-money.

6.3. We further find merit in the contention of the assessee that the addition has been made solely on the basis of the statement of the builder without bringing any independent material on record to establish the actual flow of cash from the assessee. There is nothing on record to indicate that the revenue traced the source of such alleged cash payment, examined the financial affairs of the assessee to demonstrate availability of undisclosed cash, or collected any contemporaneous evidence establishing that the assessee had paid any amount over and above the consideration recorded in the registered documents.

6.4. We also notice that the *Co-ordinate Bench of this Tribunal* in *Mrs.Mopnika Anand Gupta vs. ITO*, in *ITA No.5561/Mum/2018*, dealing with an identical issue arising out of the very same search on the Cosmos Group, held that an addition towards alleged on-money payment cannot be sustained merely on the basis of the statement of the builder in the absence of corroborative material found from the purchaser. The *Tribunal* also observed that the electronic evidence relied upon by the revenue must satisfy the requirements governing admissibility. The revenue has not brought on record any distinguishing feature warranting a departure from the aforesaid decision.

6.5. The principle laid down by the *Hon'ble Supreme Court* in *CIT v. P.V. Kalyanasundaram (2007) 164 Taxman 78* equally supports the proposition that additions based solely on the statement of a third party, without independent corroborative evidence establishing actual payment of on-money by the purchaser, cannot be sustained. *Hon'ble Court* further held that, suspicion, however strong, cannot substitute legal proof.

6.6. In the present case, except for the seized documents found from the builder and the statement of its promoter, no material has been brought on record to establish that the assessee actually paid cash of ₹7,24,000/- over and above the documented sale consideration. The revenue has neither produced any corroborative evidence recovered from the assessee nor afforded any material demonstrating the movement of unaccounted funds from the assessee to the builder. In these circumstances, the evidentiary burden cast upon the revenue remains undischarged.

6.7. Accordingly, respectfully following the decision of the Co-ordinate Bench in *Mrs. Mopnika Anand Gupta* (supra), which itself is founded on the ratio laid down by the *Hon'ble Supreme Court* in *P.V. Kalyanasundaram* (supra), we hold that the addition of ₹7,24,000/- is unsustainable in law. The orders of the lower authorities on this issue are set aside and the Ld.AO is directed to delete the addition.

Accordingly, grounds raised by the assessee is accordingly allowed.

In the result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 04/08/2026.

Sd/-	***Sd/-***
JAGADISH	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: 04/08/2026
SC, Sr. P.S.

Copy to:

1	**MR. VIKAS KAILASHCHANDRA GUPTA** **,** **11D, TWILITE COSMOS HORIZEN** **NEAR BLUE STAR COMPANY** **POKHRAN ROAD,,** **THANE-400601,** **MAHARASHTRA**
2	**INCOME TAX OFFICER WARD 1(5),** **1ST FLOOR, MOHAN PLAZA WAYLE** **NAGAR KALYAN,** **MUMBAI-421301, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
5	GUARD FILE

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