IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.133/PUN/2026
निर्धारण वर्ष / Assessment Year : 2024-25

Varun Hemant Keskar, 2A, Hougang, Street 11, Singapore, The Minton, Singapore- 538752 PAN : AMVPK2055Q	Vs.	ITO, Ward-2, Pune.
Appellant		Respondent

Assessee by	:	Shri Rajendra Ranade
Revenue by	:	Shri Sandeep Jumale (Virtual)
Date of hearing	:	03.08.2026
Date of pronouncement	:	12.10.2026

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 01.12.2025 passed by Ld. Addl./JCIT(A)-1, Ahmedabad ['Ld. CIT(A)'] for the assessment year 2024-25.

2. The appellant has raised the following grounds of appeal :-

"1. Incorrect interpretation of Section 251 with reference to Section 119 of the Act, resulting into Jurisdictional error, rendering the impugned order unlawful.

That Ld. Appellate authority has erred in drawing the finding in para 7.2.4 of the impugned appellate order that appellate jurisdiction cannot

substitute remedies u/s 119.2.b is erroneous. Section 251 confers upon the appellate authority, independent, wide, and comprehensive powers, which are not in any way subordinate to Section 119. The appellate authority is fully empowered to entertain and adjudicate fresh claims, either Suo moto or at the instance of the appellant. Dismissing the appeal as non-maintainable instead of adjudicating it on merits amounts to a jurisdictional error The impugned order is therefore bad in law and deserves to be set aside The appellant therefore prays for being assessed on merits and within the provisions of the Law.

2 Incorrect restrictive interpretation of Section 2461, against the Intimation u/s 1431 of the Act

That on facts and in law, the Ld Appellate Authority has erred in wrongly interpreting Section 2461 of the Income Tax Act and holding that the appeal against the Intimation u/s 1431 is not maintainable Section 246 permits an appeal against an order, where the assessee objects to adjustments made, tax determined, loss computed, or status assessed These limbs or causes of action, apply equally to orders u/s 1431, 1433, and 144, all of which deal with determination of tax, loss, or residential status and therefore restricting these causes of action, only to orders u/s 1433 or 144 and not making them operative in respect of Intimations u/s 1431 is unlawful The impugned appellate order is therefore bad in law and liable to be set aside, and the appellant deserves assessment on merits

3 Maintainability of an Appeal u/s 2461 where the Tax determined u/s 1431 of the Act is objected:

That the Ld Appellate Authority failed to appreciate that Section 2461 is conferring a right of appeal in the hands of the appellant / assessee where one of the five independent limbs or causes of action described therein gets hit in the present case, one such causes of action is that the Appellant has objected to the amount of tax determined, more particularly at Rs 1,70,372 under the Intimation u/s 1431, whereas the correct tax liability under law was NIL The appellate authorities failure to recognize and admit the referred independent statutory right and therefore the impugned order is unlawful Accordingly, the appellate order deserves to be set aside and the appellant is entitled to be assessed afresh on merits as per law.

4 Impugned Order is violative of Principles of Natural Justice

That the notice of hearing issued by the appellate authority prior to passing the impugned order was Itself defective and unlawful The notice neither raised any objection regarding maintainability of the appeal nor called upon the appellant to explain why the appeal should not be dismissed on that ground On the contrary, para 3(a) of the

notice specifically required submission of documents and evidence in support of the claim put up in appeal Dismissing the appeal on maintainability without prior notice to that effect, violates principles of natural justice Consequently, the impugned appellate order is bad in low and liable to be set aside and appeal should be disposed of on merits

5 Non consideration of written submissions advanced in the Appeal Proceedings:

That the Ld Appellate Authority has failed to consider the detailed submissions made and judicial precedents relied upon by the appellant, more particularly in response to Ground No 4 relating to maintainability of the appeal and the scope of appellate powers The impugned Appeal Order is absolutely silent and has not at all dealt with the referred submissions made The complete non-consideration of contentions and the case laws placed on record, while coming to the conclusion of Non-Maintainability of Appeal, vitiates the appellate proceedings On this ground alone, the impugned order deserves to be set aside and the appellant is entitled to assessment on merits in accordance with low.

5 Impugned Appeal Order is based on the wrong findings

That the findings recorded by the Ld Appellate Authority in para 721 forming the basis of the impugned order are incorrect and contrary to the Law and CBDT circulars The findings that i the return was processed purely on the data furnished by the appellant, and ii No adjustment u/s 1431a was made. are erroneous The processing authority failed to consider the disclosed facts that the appellant was a Non-Resident Indian and a Tax Resident of Singapore, in the Return of Income filed by him in terms of applicable circulars, the DTAA benefits under the India-Singapore Treaty ought to have been granted at the processing stage Suo Moto The impugned appellate order is therefore unlawful and is liable to be set aside.

7 Incorrect Taxation of Long Term Capital Gain, arising from Mutual Funds, disregarding the provisions of India Singapore DTAA:

That the Ld Appellate Authority has erred in not granting the benefit under the India Singapore DTAA and accordingly in not excluding the Tax on capital gains of Rs 17,15,446 arising from sale/transfer of mutual fund units for AY 2024-25, in the case of the present appellant being Non Resident at Singapore The said Long Term Capital Gains ought to have been considered under the India-Singapore DITAA, more particularly Article 135 and the same ought to have got taxed at appellants country of Residence, at Singapore and as such taxing the same under the domestic law is therefore incorrect it is prayed that the

said capital gains be excluded from total income and the appellant be assessed afresh on facts, figures, and merits.

8 Binding precedent of Mumbai ITAT

That pursuant to the judgment dated 26.03.2025 delivered by the Honorable Mumbai ITAT in Anushka Sanjay Shaha vs ITO ITA No 174/MUM/2025/AY 2022-23, the appellant has become entitled to get benefits under the India Singapore DTAA, more particularly Article 135, to the capital gains of Rs 17,15,446 for AY 2024-25 Accordingly, the total income requires reassessment by deleting such capital gains.

9 Entitlement to raise Fresh Claims before Appellate Authority

That the Ld Appellate Authority has erred in not appreciating the position that the appellant is legally entitled to raise a fresh claim before the appellate authority, more particularly in view of the provisions of Section 251 of the Act and the binding precedents relating thereto Moreover, at the time of filing the Return of Income on 26.06.2024, the appellant was justified in offering the referred income from Capital Gain to tax, since the referred Mumbai ITAT Judgment was delivered on 26.03.2025 and got published after 31.03.2025, when the revision was not possible as the statutory time limit had expired The appellant therefore raised the fresh claim for not getting taxed in respect of the referred capital gains of Rs 17,15,446 disclosed in the return for AY 2024-25 The appellant therefore prays for fresh assessment on merits and for determination and grant of the correct refund due to him.

10 Non consideration of the correct legal position relating to Jurisdiction and Scope of Section 251:

That Section 251 of the Income Tax Act, read with its explanations, confers wide, comprehensive, and self-contained powers upon the appellate authority to admit, entertain, and adjudicate fresh claims, grounds, or evidence, either Suo moto or at the appellants instance The said provisions of Section 251 are neither subordinate to nor are yielding to Section 1192b, as inferred in the Impugned Order In view of these independent and self-contained statutory powers, the said appeal ought to have got admitted and adjudicated on merits It is therefore prayed that the present appeal, containing lawful claims of the appellant, be entertained and disposed of on merits in accordance with law.

11 Right of amendment:

That the appellant reserves the right to add to, alter, amend, or raise any additional grounds of appeal at or before the time of hearing."

3. Facts of the case, in brief, are that the assessee is an individual non-resident working in Singapore and also in possession of tax residency certificate for the year 2023-24 from the competent authority at Singapore and has furnished his return of income u/s 139 of the IT Act on 26.06.2024 in the capacity of non-resident by declaring income of Rs.17,73,990/- which includes capital gain of Rs.17,15,446/- on sale of mutual funds unit along with other income. Vide intimation dated 06.09.2024, the return was processed by CPC as it is, without making any adjustments and accepting the income returned by the assessee. The assessee furnished appeal before Ld. CIT(A), who vide order dated 01.12.2025 dismissed the appeal by observing as under :-

> *"7. Decision:*
>
> *Appellant has raised 7 grounds of appeal.*
>
> *7.1. Background of the case*
>
> *The appellant filed his return of income for AY 2024–25 declaring his residential status as Non-Resident and contended that he is a tax resident of Singapore, placing reliance on Tax Residency Certificates issued by Singapore authorities. During processing of return u/s 143(1), capital gains of Rs.17,15,446 arising from sale of mutual fund units were subjected to tax, resulting in tax liability of Rs.1,70,372 being adjusted against TDS credit. Aggrieved by such taxation, the appellant filed the present appeal contending that such gains are not taxable in India by virtue of Article 13(5) of the India–Singapore DTAA and also relied upon the decision of ITAT Mumbai in the case of Mrs. Anushka Sanjay Shah v. ITO.*
>
> *7.2. Maintainability of Appeal – Jurisdictional Issue*

At the outset, it is necessary to examine whether the present appeal is maintainable in law. The right to appeal is a statutory right and can only be exercised strictly in accordance with the provisions of the Act.

Section 246 of the Income Tax Act, 1961 provides as under:

> *"Appealable orders before Joint Commissioner (Appeals).*
>
> *246. (1) Any appellant aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against—*
>
> *1. an order being an intimation under sub-section (1) of section 143, where the appellant objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the appellant objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;*
>
> *2. ……*
>
> *3. ……*
>
> *(h) an order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (g)……"*

From the plain reading of clause (a) of Section 246(1), it is clear that an appeal against intimation u/s 143(1) is maintainable only where the appellant objects to the making of adjustments.

7.2.1. On careful perusal of the intimation issued u/s 143(1), it is evident that:

- *The return has been processed purely on the basis of data furnished by the appellant.*
- *No adjustment within the meaning of section 143(1)(a) has been made by CPC.*
- *There is no variation, disallowance or modification made by CPC which could be termed as an "adjustment".*

7.2.3. Thus, the grievance raised by the appellant does not arise out of any adjustment made by CPC, but arises from his own omission to claim DTAA benefit in the return of income. Accordingly, the essential jurisdictional condition for entertaining an appeal against an intimation u/s 143(1), as prescribed in Section 246(1)(a), is not satisfied. Therefore, the present appeal is not maintainable in law.

In cases where the appellant seeks to claim a fresh exemption or treaty benefit which was not originally claimed in the return, the statute prescribes specific remedies, namely:

1. Filing of a revised return under section 139(5), if within the prescribed time limit; or

2. Filing an application for condonation of delay under Section 119(2)(b) before the competent authority for permitting filing of revised return or making such claim.

7.2.4. The appellate jurisdiction cannot be invoked as a substitute for these statutory remedies. The appellate authority cannot assume jurisdiction where the statute does not confer one.

Accordingly, the only lawful course open to the appellant was either:

- *To revise the return of income (if within limitation), or*
- *To approach the prescribed authority under Section 119 of the Act for condonation of delay in making the claim.*

7.2.5. Since the appeal itself is held to be not maintainable, no adjudication on merits regarding DTAA applicability, taxability of capital gains, or reliance on judicial precedents is called for at this stage. The same would amount to assuming jurisdiction not vested under the statute.

7.2.6. In view of the above facts and legal position, the appeal filed against the intimation u/s 143(1) is not maintainable as no adjustment was made by CPC. The grievance of the appellant arises from his own omission in the return and not from any action of CPC. The appropriate remedy lies under Section 119 of the Income Tax Act or by way of revised return, and not by way of appeal.

7.2.7. Therefore, the appeal filed by the appellant for Assessment Year 2024–25 is hereby dismissed as not maintainable for want of jurisdiction.

However, the appellant is at liberty to seek appropriate remedy as available under law, including filing an application for condonation of delay before the prescribed authority under Section 119 of the Income Tax Act, 1961.

7.3. In result, the appeal of the appellant is hereby dismissed as not maintainable for want of jurisdiction."

4. It is the above order against which the assessee is in appeal before this Tribunal.

5. We have heard Ld. Counsels from both the sides and perused the material available on record including the paper book furnished by the assessee. In this regard, we find that the assessee non-resident has shown taxable capital gain of Rs.17,15,446/- in his return of income which was accepted by CPC on 06.09.2024, however, the assessee came to know about coordinate bench decision passed in the case of Mrs. Anushka Sanjay Shaha vs. ITO, IT(IT)A No.174/MUM/2025 order dated 26.03.2025 wherein the Tribunal has treated impugned capital gain as exempt under India-Singapore DTAA more particularly under Article 13(5) thereof. In the light of this decision, assessee requested before Ld. CIT(A) to allow him the similar benefit as in the above coordinate bench decision (supra). Ld. CIT(A) dismissed the appeal by saying that the assessee has not claimed above capital gain as exempt in his return of income and he was required to file a revised return and may request before CBDT to condone the delay u/s 119(2)(b) of the IT Act.

6. Before us, Ld. Counsel of the assessee placed reliance on various decisions/judgements including the case of CIT vs. Pruthvi Brokers & Shareholder [2012] 23 taxmann.com 23 (Bom.) wherein Hon'ble Court dismissed the Revenue's appeal and upheld the Tribunal's order and CIT(A)'s order wherein new claim made by the assessee was allowed which was not claimed in the return of income by observing as under :-

> *"**18.** In the case before us, the CIT(A) and the Tribunal have held the omission to claim the deduction of Rs.40,00,000/- to be inadvertent. Both the appellate authorities held, after considering all the facts, that the assessee had inadvertently claimed a deduction of Rs.20,00,000/- paid after the end of the year in question. We see no reason to interfere with this finding. We see less reason to interfere with the exercise of discretion by the appellate authorities in permitting the respondent to raise this claim. That the respondent is entitled to the deduction in law is admitted and, in any event, clearly established. In the circumstances, the respondent ought not be prejudiced.*
>
> ***19.** The orders of the CIT(A) and the Tribunal clearly indicate that both the appellate authorities had exercised their jurisdiction to consider the additional claim as they were entitled to in view of the various judgments on the issue, including the judgment of the Supreme Court in National Thermal Power Corpn. Ltd. (supra) . This is clear from the fact that these judgments have been expressly referred to in detail by the CIT(A) and by the Tribunal.*
>
> ***20.** We wish to clarify that both the appellate authorities have themselves considered the additional claim and allowed it. They have not remanded the matter to the Assessing Officer to consider the same. Both the orders expressly direct the Assessing Officer to allow the deduction of Rs. 40,00,000/- under section 43B of the Act. The Assessing Officer is, therefore, now only to compute the respondent's tax liability which he must do in accordance with the orders allowing the respondent a deduction of Rs. 40,00,000/- under section 43B of the Act.*

21. *The conclusion that the error in not claiming the deduction in the return of income was inadvertent cannot be faulted for more than one reason. It is a finding of fact which cannot be termed perverse. There is nothing on record that militates against the finding. The appellant has not suggested, much less established that the omission was deliberate, mala-fide or even otherwise. The inference that the omission was inadvertent is, therefore, irresistible.*

22. *It was then submitted by Mr. Gupta that the Supreme Court had taken a different view in Goetze (India) Ltd (supra). We are unable to agree. The decision was rendered by a Bench of two learned Judges and expressly refers to the judgment of the Bench of three learned Judges in National Thermal Power Comp. Ltd. (supra). The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return. The Commissioner of Income-tax (Appeals) allowed the assessee's appeal. The Tribunal, however, allowed the department's appeal. In the Supreme Court, the assessee relied upon the judgment in National Thermal Power Co. Ltd. (supra) contending that it was open to the assessee to raise the points of law even before the Tribunal. The Supreme Court held :-*

> *"4. The decision in question is that the power of the Tribunal under section 254 of the Income-tax Act, 1961, is to entertain for the first time a point of law provided the fact on the basis of which the issue of law can be raised before the Tribunal. The decision does not in any way relate to the power of the Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. In the circumstances of the case, we dismiss the civil appeal. However, we make it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the Income-tax Appellate Tribunal under section 254 of the Income-tax Act, 1961. There shall be no order as to costs." [Emphasis supplied]*

23. *It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the*

Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.

24. *A Division Bench of the Delhi High Court dealt with a similar submission in CIT v. Jai Parabolic Springs Ltd. [2008] 306 ITR 42 / 172 Taxman 258 . The Division Bench, in paragraph 17 of the judgment held that the Supreme Court dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for the just decision of the case.*

25. *In the circumstances, it is not necessary to decide the other questions raised by Mr. Mistri.*

26. *The appeal is, therefore, dismissed."*

7. Apart from above, we find that the coordinate bench of this Tribunal in the case of various BSNL Employees' case has allowed the deduction u/s 10(10B) of the IT Act which was not claimed originally in the return of income and its claim was made for the first time before Ld. CIT(A). In this regard, we find support form coordinate bench decision passed in the case of Prathibha Jgadish Unawane vs. ITO in ITA No.1117 & 1118/PUN/2026 and others order dated 29.04.2026 wherein the Tribunal allowed the claim which was raised for the first time before Ld. CIT(A). The above coordinate bench decision was subsequently followed by the

Tribunal in the case of Makarand Prabhakar Abhyankar vs. ADIT, CPC, Bengaluru in ITA No.1497/PUN/2026 order dated 05.10.2026 wherein the Tribunal allowed the claim made by the assessee for the first time before Ld. CIT(A).

8. Respectfully following the judgement of Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholder (supra), we find force in the argument of Ld. Counsel of the assessee and accordingly, deem it appropriate to set-aside the order passed by Ld. CIT(A) and direct the assessee to furnish revised computation regarding capital gain income before the Jurisdictional Assessing Officer, who shall re-compute the tax liability afresh and as per fact and law in the light of coordinate bench decision passed in the case of Mrs. Anushka Sanjay Shah (supra) and grant the refund, if any, arising to the assessee after due verification of documents with regard to capital gain income. Needless to say, the Jurisdictional Assessing Officer shall decide the above issue after providing reasonable opportunity of hearing to the assessee. The assessee is also directed to respond to the notices issued by the Jurisdictional Assessing Officer in this regard and to produce relevant documents, evidences and submissions in support of his claim without taking

any adjournment under any pretext, otherwise the Jurisdictional Assessing Officer shall be at liberty to pass appropriate orders as per law. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 12th day of October, 2026.

Sd/-	**Sd/-**
(MANISH BORAD)	**(VINAY BHAMORE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 12th October, 2026.

Sujeet/DOC Sujeet Kumar Sharma

Digitally signed by Sujeet Kumar Sharma
Date: 2026.10.13 10:04:58 +05'30'

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A)-1, Ahmedabad.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**SMC**" बेंच, पुणे / DR, ITAT, "**SMC**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.