

**आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.259/AHD/2023** (A.Y. 2012-13)

(Hearing in Physical Court)

Shushilaben Pratapbhai Thakor 6, Shiv Jal, Shailesh Park Society, Gandevi Road, Navsari- 396445 <b>PAN : ADEPT 7623 H</b>	<b>Vs</b>	Income Tax Officer, Ward-5, Navsari, Room No.204, 2 <sup>nd</sup> Floor, Aayakar Bhawan, Near Char Pool, Police Choki, Navsari- 396445
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारितकीओरसे /Assessee by	Ms. Himali Mistry, C.A
राजस्वकीओरसे /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	20.04.2023
सुनवाई की तारीख/Date of hearing	06.07.2023
उद्घोषणा की तारीख/Date of pronouncement	07.07.2023

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

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/ld. CIT(A)”] dated 03.03.2023 for the assessment year 2012-13, which in turn arises out of assessment order passed by Income Tax Officer, Ward-5, Navsari / Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 31.03.2016. The assessee has raised the following grounds of appeal: -

*“(I) Incorrect dismissing of appeal by invoking section 249(2):*

*(1) The learned CIT(A) seriously erred in dismissing the appeal without verifying the offline office records that appeal was filed in time.*

*(2) With the Government making filing of appeal before the CIT(A) online, the appellant was obliged to file the appeal online again which unfortunately learned CIT(A) accepted as a date of filing of appeal.*

*(3) During a long drawn appellate proceedings in the physical mode, at no place, the then learned CIT(A) expressed note of delay.*

*(II) Without prejudice to the above, the appellant puts forth the grounds placed before the CIT(A) for consideration.*

*(1) Reopening of Assessment:*

*The Assessing Officer erred in reopening of assessment as the reasons given for reopening do not show correct facts.*

*(2) Addition of Capital Gain Rs.1,59,28,300:*

*(a) On the facts and circumstances of the case and as per law, the Assessing Officer erred in taxing surplus on transfer of agricultural land situated beyond 8 kms. From Surat.*

*(b) The appellant submits that the Assessing Officer was not justified in ignoring report of the architect and relying on certificate of Talati and report of Inspector who were not produced for cross-examination.*

*(3) Deductions from capital gains without prejudice to the above.*

*(a) The Assessing Officer was required to grant deduction of indexed value of fair market value as on 01.04.1981.*

*(b) The Assessing Officer ought to have given deduction for payment made to relatives who had overriding charge on the land sold.*

*(c) The Assessing Officer also ought to have given deduction of capital expenditure incurred as “**cost of improvement**”.*

*(d) The Assessing Officer ought to have allowed deduction u/s 54B of the Act in respect of new agricultural land acquired.*

*(4) Miscellaneous:*

*(a) The Assessing Officer erred in charging interest u/s 234A of the Act.*

*(b) The Assessing Officer erred in charging interest u/s 234B of the Act.*

*(c) The Assessing Officer erred in charging interest u/s 234C of the Act.*

*(d) The Assessing Officer erred in charging interest u/s 234D of the Act.*

*(e) The appellant craves leave to add, alter or vary any of the grounds of appeal.*

*(III) The appellant craves leave to add, alter or vary any of the grounds of appeal.”*

2. Rival submissions of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior Departmental Representative (Ld.Sr-DR) for the Revenue heard and record perused. At the outset of hearing, Ld. AR for the assessee submits that NFAC/Ld. CIT(A) dismissed the appeal of assessee by taking view that appeal of the assessee filed beyond the prescribed period of limitation and assessee in Form-35, the assessee has not mentioned that there is no delay. However, there is delay in filing appeal and delay is not fully explained by assessee. The Ld. AR for the assessee submits that in fact there was no delay in filing instant appeal and assessment order passed on 31.03.2016 was received by assessee on 06.04.2016. The appeal before Ld. CIT(A) was filed on 02.05.2016, copy of acknowledgment of Form-35 is filed on record. The assessee

also filed appeal by way of electronic/ online mode on 14.06.2016, copy of such acknowledgement is also produced on record. The Ld. AR for the assessee submits that no specific show cause notice that appeal of assessee is beyond the time period prescribed for filing appeal was issued to the assessee. The NFAC/Ld. CIT(A) nowhere recorded that any specific notice about explaining the cause of alleged delay was issued. The NFAC/Ld. CIT(A) on page-1 of the order recorded that appeal was instituted on 14.06.2016 and summarily dismissed the appeal without specifying number of days of delay in filing of appeal.

3. The Ld. AR for the assessee submits that assessee furnished complete details and submission in response to various notices, yet the appeal of assessee was dismissed as unadmitted. The Ld. AR for the assessee submits that there was no delay in filing though assessee filed appeal within the prescribed period of limitation. Otherwise, the Central Board of Direct Taxes (CBDT) has relaxed the filing of appeal electronically during the initial period of appeal in 2016. The Ld. AR for the assessee submits that in fact there is no delay, even if it is presumed that for technically that there was delay, such appeal may be condoned as the assessee has already

filed appeal electronically to make the compliance of Rule of filing appeal electronically.

4. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. In alternative submission, Ld. DR for the revenue submits that in case Bench is of the opinion view that there was no delay on the part of assessee in filing appeal, before NFAC/Ld. CIT(A), since the NFAC/Ld. CIT(A) has not discussed merit of the case, grounds of appeal raised by assessee may be remitted back to the file of NFAC/Ld. CIT(A) for afresh adjudication in accordance with law.
5. We have considered the submissions of both the parties and find that there is very short issue for our consideration if the appeal was really time barred or not at the initial phase of filing first appeal electronically. We find that the assessee has filed appeal in physical forum on 02.05.2016 and further the assessee has also filed appeal electronically mode on 14.06.2016. filing of appeal in electronic mode on 14.06.2016 is duly acknowledged by NFAC/Ld. CIT(A). Considering the fact that assessee has filed appeal in physical forum within time and also filed appeal electronically mode within a reasonable time. Thus, we do not find any justification in dismissing the appeal of assessee as time barred that too,

without issuing any show cause about such alleged delay by NFAC/Ld. CIT(A). Considering the facts and circumstances of the present case, we find that there was no delay in filing of appeal before NFAC/Ld. CIT(A) as it was initial period when the taxpayers was facing difficult or they were either not aware of filing electronically. There was no mandate of filing appeal electronically in statue, otherwise assessee has filed appeal electronically within reasonable time period and appeal is considered as filed within time.

6. Considering the fact that we condone the delay and grounds of appeal raised by assessee are restored back to the file of NFAC/Ld. CIT(A) to adjudicate all the grounds of appeal raised by assessee on merit and in accordance with law. Needless to direct the NFAC/Ld. CIT(A) that before passing order shall grant fair and reasonable opportunity of assessee as the matter relates assessment year 2012-13. The assessee is also directed to provide complete details of submissions with evidences, if so required by ld CIT(A). As the appeal relates to AY 2012-13, NFAC/Ld. CIT(A) is also directed to expedite the matter as early as possible. In the result, the grounds of appeal raised by the assessee is allowed for statistical purpose.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07/07/2023.

Sd/-

**(Dr ARJUN LAL SAINI)**

[लेखा सदस्य/**ACCOUNTANT MEMBER**] [न्यायिक सदस्य **JUDICIAL MEMBER**]

Surat, Dated: 07/07/2023

*Dkp. Outsourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

Sd/-

**(PAWAN SINGH)**

By order

// True Copy //

Sr.P.S./Assistant Registrar, ITAT, Surat