

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.389/SRT/2024

Assessment Year: (2018-19)

(Physical hearing)

Hasmukh Naranbhai Padsala 7-8, Maruti Complex, L.H. Road, Santosh Nagar, Surat-395006	Vs.	The ACIT, Central Circle – 3, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFLPP1542A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Ms. Chaitali Shah, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	06/08/2024
घोषणा की तारीख /Date of Pronouncement	29/08/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order of the Commissioner of Income-tax (Appeals) - 4, Surat [in short, "CIT(A)"] under section 250 of the Income-tax Act, 1961 (in short, "the Act") dated 14.06.2022 for assessment year (AY) 2018-19.

2. The grounds of appeal raised by the assessee are as under:-

"1. On facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, Ld. Assessing Office has erred in making addition of Rs.32,00,000/- on account of alleged unexplained cash credit being unsecured loans obtained during the year.

4. On the facts and circumstances of the case as well as law on the subject, Ld. Assessing Officer has erred in making addition of Rs.2,13,185/- on account of alleged unexplained cash credit being interest payments during the year.

5. It is therefore prayed that that above addition made by the Assessing Office may please be deleted or the matter may please be set aside to the file of CIT(A) for fresh adjudication.

6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. Appeal filed by the assessee is delayed by 604 days. The assessee has filed an affidavit for condonation of delay in filing of appeal before this Tribunal. In the affidavit, it has been stated that the order of Ld. CIT(A) was passed on 14.06.2022 and accordingly appeal before ITAT should have been filed on or before 13.08.2022. However, appeal was filed on 08.04.2024 after delay of 604 days. It is submitted that in Form 35 the E-mail id mentioned as 'green@happyhomegroup.in', which is E-mail id of his partnership firm. It is also stated that while filing Form 35 the assessee specifically opted 'No' for sending notices/communication on the said E-mail id. However, notices were sent to the said E-mail id and assessee could not check the E-mail id. The impugned order should have been served physically. He finally came to know about the appellate order only when the penalty order u/s 271AAC was passed on 09.03.2024. Thereafter, assessee downloaded the order from ITD portal for the purpose of filing appeal before Tribunal after consulting his

Authorized Representative (AR); hence, the delay has occurred. The Ld. AR submitted that delay of 604 days was neither deliberate nor intentional and assessee was prevented by sufficient and reasonable cause for not filing the appeal in time. In fact, the order was not served on assessee physically. The Ld. AR has submitted a paper book containing the penalty order u/s 271AAC and three decisions namely; (i) Pathhapati Subba Reddy (Dies) & Ors. Vs. The Special Deputy Collector (LA) – SLP(C) No. 31248 of 2018 (SC), (ii) Jayshree Kamleshkumar Patel vs. ITO, ITA No.285/SRT/2022 (Ahmedabad Trib) and (iii) M/s Chintan Enterprise vs. ITO, ITA No.179/SRT/2021 (Surat Trib).

4. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue opposed the prayer of the assessee for condonation of delay. He submitted that at Column No. 17, the E-mail address is 'green@happyhomegroup.in" at which the notices and orders were sent. He also submitted that how could the assessee receive the penalty notice when it was sent in the same address. Therefore, the reasons given by the assessee would not constitute 'sufficient cause' within the meaning of Section 253(3) of the Act.

5. We have heard both parties on this preliminary issue of condonation of delay. We have also deliberated on the decisions relied on by the Ld. AR. There was a delay of 604 days in filing appeal before the ITAT. In the affidavit, the appellant has stated that the Ld. CIT(A) issued the notices on E-mail id 'green@happyhomegroup.in', which was specifically mentioned as 'No' in Form

No. 35. The main contention of the Id AR is that appellate order was not served on the assessee in physical form. To verify such fact, we called the record of first appeal/ CIT(A). On perusal of case record, we find that order passed by CIT(A) on 14/06/2022 was sent to assessee through speed post on 07.07.2022. The Registered article/envelop was returned back with the remark of postal authority "left", which was received in the office of CIT(A) on 11/07/2022. Thus, on verification of this fact, we find merit in the submission of Id. AR of the assessee that physical copy of order passed by CIT(A) was not received in physical form. However, we find that in Column No.17 of the same Form No.35, which requires '**Address to which notices may be sent to the applicant**', the E-mail address is '**green@happyhomegroup.in**'. The appellant has verified himself the Form No.35, which is just below Column No. 17. Therefore, the appellant cannot take the plea that he had not given the impugned E-mail id. Still keeping in view the principle of law that when technical considerations are pitted against cause of substantial justice, the cause of substantial justice may be preferred. Thus, delay of in filing appeal is condoned but subject to payment of cost of Rs. 10,000/- to be deposited with Miscellaneous account of department. Now coming to merit of the case.

6. We note that Id. CIT(A) has passed ex parte order due to non-compliance by the assessee before him. The order of Id. CIT(A) is not as per Section 250(6) which mandates that order must state point of determination, decision thereon and reasons of such decision. Thus, keeping in view the

principle of natural justice and fair play, in our view, the assessee required one more opportunity to contest the case on merit. Therefore, without delving deeper into merit of the case, in the interest of justice, the order of Id. CIT(A) is set aside and restored matter back to file of Id. CIT(A) for fresh adjudication and to pass speaking order after affording sufficient opportunity of being heard to the assessee. The assessee is also directed to submit the relevant details and documents without any adjournment with valid reasons. In the result, the grounds of appeal raised by assessee are allowed for statistical purposes.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order is pronounced on 29/08/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूत/Surat

दिनांक/ Date: 29/08/2024

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat