

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1100/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2017-18)

Sunilkumar Narsinhbhai Patel Patel Fali, Old Bus Station Road, Vadagam – 383307, Sabarkantha District, Gujarat, 383307	बनाम/ Vs.	The Income Tax Officer Ward-1, Modasa, Gujarat
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACXPP2738B		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Chirag Raval, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rohit Aasudani, Sr. DR

Date of Hearing	03/09/2024
Date of Pronouncement	05/09/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre, Delhi, (in short ‘the CIT(A)’), dated 16.11.2023 for the Assessment Year (A.Y.) 2017-18.

2. There is a delay of 130 days in filing of this appeal. The assessee has filed an affidavit explaining the reason for delay. It

is submitted that the order of the Ld. CIT(A) was received on the email of his nephew who did not inform him in time. It is further submitted that the assessee is an Agriculturist and residing in a remote village and he is not a tax savvy. Due to delay in intimation about the receipt of CIT(A)'s order by his nephew, the delay has been caused in filing of this appeal. Considering the reason as explained by the assessee, the delay is condoned.

3. The brief facts of the case are that the return for A.Y. 2017-18 was filed on 27.03.2018 declaring total income of Rs. Nil and agriculture income of Rs.23,35,817/-. The case was selected for limited scrutiny for the reason "Large agricultural income shown in ITR and Large cash deposit during demonetization". The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 15.12.2019 at total income of Rs.23,35,817/-, which was in respect of agricultural income not considered genuine by the AO.

4. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

5. Now, the assessee is in appeal before us and has taken the following grounds in this appeal:

"GROUND NO.1

Confirming the addition of Rs.23,35,817/ of agricultural income as taxable Income:-

*The Learned Commissioner of Income Tax (Appeals) NFAC, Delhi (thereinafter referred to as "the Learned CIT(A)") has erred in law and on facts as much as confirming the **addition of Rs.23,35,817/-** made by the learned AO without considering the facts that the appellant is a traditional farmer and has earned agricultural income only and ignored the land details and agricultural income bills provided by the appellant during the assessment proceedings. The Learned CIT(A) has ignored the fact that the addition of Rs.23,35,817/- made by the learned AO is not in accordance with the addition of Rs.7,00,745/- (i.e.30% of Rs.23,35,817/-) which was proposed by the learned AO in Show Cause Notice dated 07-12-2019 issued by the learned AO. The learned AO has mentioned the reference of Show Cause Notice in Para No.3.2 of Assessment Order u/s.143(3) dated 15-12-2019. Copy of such assessment order is already available with the Learned CIT(A) at the time of passing order u/s.250 of the Act, dated 16-11-2023.*

Therefore, it is prayed that such additions need to be deleted by passing appropriate order."

6. Shri Chirag Raval, Ld. AR appearing for the assessee explained that the Ld. CIT(A) had dismissed the appeal without examining the merits of the case. He submitted that only three opportunities were provided to the assessee by the Ld. CIT(A), which could not be complied by the assessee and as a result the appeal was dismissed for non-prosecution. The Ld. AR submitted that the first notice dated 28.01.2021 was issued during the Covid pandemic period, which could not be applied by the assessee. Thereafter, two opportunities were provided on 13.09.2023 and on 29.09.2023 which also could not be complied for the reason that the notices were sent on email, which could not be accessed by the assessee in time. The Ld. AR explained that the assessee being an agriculturalist was residing in village and e-mail id of his nephew was given in the appeal memo. The Ld. AR submitted

that in Form No.35, the assessee had indicated that no notice/communication may be sent on the email. Still, the notices were sent by Ld. CIT(A) only on the email and no physical notice was received by the assessee, which resulted in non-compliance on the part of the assessee. The Ld. AR requested that the matter may be set aside to the file of the Ld. CIT(A) to decide the matter on merits after allowing another opportunity of being heard to the assessee.

7. Per contra, Sri Rohit Asudani, the Ld. SR. DR supported the order of the Ld. CIT(A). He, however, had no objection if the matter is set aside to the file of the Ld. CIT(A) considering the fact that no physical notices were issued to the assessee.

8. We have carefully considered the rival submissions. It is found from the Form No.35 that the assessee has clearly indicated his choice that no notice/communication should be sent on email. As explained by the assessee, no physical notice was received by the assessee and all the notices were sent by the Ld. CIT(A) only on the email ID as mentioned in Form No.35. The assessee has explained that the said email ID pertained to his nephew who was not residing with him. As a result, the assessee could not be timely communicated about the requirement of compliance before the Ld. CIT(A). In view of these facts, we are of the considered opinion that the matter may be set aside to the Ld. CIT(A) to allow another opportunity of being heard to the assessee and,

thereafter, decide the matter on the merits of the case. The Ld. CIT(A) is advised to issue notice to the assessee on email ID as well as by physical mode as well. The assessee is also directed to make necessary compliance before the Ld. CIT(A) and not to seek any adjournment without any pressing reason.

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

This Order pronounced on 05/09/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 05/09/2024

S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad