

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ SMC, अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1506/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Dinesh Ramanbhai Patel 23, Shyam Sharan Part-2 Aarohi Club Road Bopal-Ghuma Ahmedabad - 380 058 (Gujarat)	<u>बनाम/ v/s.</u>	The ITO Ward-3(2)(1) Ahmedabad
स्थायी लेखा सं./PAN: BTBPP 3659 P		

<b>अपीलार्थी/ (Appellant)</b>	.....	<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Shri Kushal Fofaria, AR
Revenue by :		Shri V.K. Mangla, Sr.DR

सुनवाई की तारीख /Date of Hearing : 17/10/2024  
घोषणा की तारीख /Date of Pronouncement: 25/10/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal by the assessee is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "(CIT(A))"], dated 30.07.2024, which upheld the penalty of Rs.20,000/- levied by the Assessing Officer [hereinafter referred to as "AO"] under Section 272A(1)(d) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] relevant to the Assessment Year (AY) 2017-18.

**Facts of the case:**

2. The assessee is an individual engaged in farming and did not file his return of income for the AY 2017-18, as he claimed to have only agricultural income. The AO issued notices under Section 142(1) of the Act on multiple occasions, which were not complied with by the assessee. Consequently, the AO completed the assessment ex-parte under Section 144 read with Sections 147 and 144B of the Act, making an addition of Rs.2,57,43,505/- as unexplained investments under Section 69 of the Act. Subsequently, the AO initiated penalty proceedings under Section 272A(1)(d) of the Act for non-compliance with the notices under Section 142(1) of the Act and levied a penalty of Rs.20,000/- (Rs.10,000 for each notice).

3. The assessee filed an appeal before the CIT(A), NFAC, challenging the levy of penalty. The appeal was filed with a delay of 199 days. The assessee claimed that the delay was caused due to unfamiliarity with the new Income Tax Portal and the procedure for responding to notices through the e-proceedings tab. However, the CIT(A) dismissed the appeal *in limine* on the ground that the assessee failed to explain "sufficient cause" for the extraordinary delay. The merits of the case were not examined.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *The Ld. CIT(A) has erred in law and on facts of the case in dismissing the appeal without appreciating the sufficient cause explained by the appellant for delay in filing the first appeal.*

2. *The Ld. CIT(A) has erred in law and on facts of the case in dismissing the appeal without dealing with the merits of the case as required u/s. 250(6) of the Act.*
3. *The jurisdictional assessing officer has wrongly assumed the jurisdiction and levied penalty u/s. 272A(1)(d) of the Act when the subject notices u/s. 142(1) of the Act were issued by the faceless assessing officer, thus leading to contravention of the provisions of Section 272A(3)(aa) of the Act.*
4. *The Ld. AO has erred in law and on facts of the Rs.20,000/- case in levying penalty of Rs.20,000/- u/s 272A (1)(d) of the Act.*
5. *The Ld. AO has erred in law and on facts of the case in levying penalty without even dealing with the reasonable cause explained by the appellant for not complying with the notices u/s. 142(1) of the Act, thus resulting in gross violation of principles of natural justice.*
6. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

5. During the course of the present appeal before us, the assessee's Authorized Representative (AR) contended that the delay in filing the appeal before the CIT(A) was due to genuine reasons, and the assessee had filed an affidavit explaining the circumstances leading to the delay. The key contents of the affidavit are summarized as follows:

1. The assessee is not well-read and has no knowledge of operating a computer or email. He depended entirely on a tax consultant, Mr. Yagnesh Kahar, who created his e-filing account and handled tax filings starting from A.Y. 2019-20.
2. A notice under Section 148 was issued on 26.03.2021 for A.Y. 2017-18, but it was sent to an email address created by the consultant, and not directly to the assessee. The consultant informed the assessee about the notice, and the assessee entrusted him with the task of handling the assessment.
3. The assessee inquired regularly about the status of the proceedings but was assured by the consultant that it would take time. However, a

dispute arose between the assessee and the consultant over professional fees, during which the consultant became unresponsive.

4. After the consultant failed to respond, the assessee sought help from a friend, who logged into the e-filing portal and discovered that ex-parte assessment and penalty orders had been passed.
5. The consultant had not made any submissions in the e-proceedings section of the portal. Instead, he had raised grievances in the grievance section, which were unrelated to the actual notices.
6. Furthermore, the physical notices were sent to an old address in Dholka, Gujarat, while the assessee had shifted to Bopal-Ghuma, Ahmedabad, thus leading to non-service of physical notices.
7. Upon discovering the ex-parte orders, the assessee immediately engaged a chartered accountant, but by then, the statutory period for filing an appeal had lapsed, leading to a delay.

6. The AR also contended that the delay in filing the appeal was also caused by the discrepancy in email addresses. The email ID provided in Form 35 was *darshilpatel7775@gmail.com*, while the notices from the CIT(A) were sent to *darshilpatel@gmail.com*. Consequently, the assessee did not receive the notices issued by the CIT(A).

7. Upon reviewing the affidavit filed by the assessee, it is clear that the delay in filing the appeal before the CIT(A) was due to technical issues with the new Income Tax portal and the tax consultant's unfamiliarity with the e-proceedings tab. The AR also submitted the copies of Grievances as downloaded from the IT Portal to support the contention. Furthermore, the email discrepancy led to the notices being sent to an incorrect email address, which prevented the assessee from receiving the communication. The

explanation provided by the assessee is genuine, and the affidavit demonstrates sufficient cause for the delay. The assessee cannot be held solely responsible for the technical challenges faced during the transition to the new portal. Therefore, in the interest of substantial justice, the delay in filing the appeal before the CIT(A) is hereby condoned.

7.1. It is also observed that the CIT(A) dismissed the appeal on the grounds of delay without addressing the merits of the case, which is against the spirit of Section 250(6) of the Act. This section mandates that the CIT(A) must dispose of the appeal after examining both the facts and the law applicable to the case.

7.2. Since the merits of the case, including the reasonableness of the penalty imposed under Section 272A(1)(d) of the Act, were not addressed by the CIT(A), it is appropriate to restore the matter for fresh adjudication. The issue raised by the assessee regarding the jurisdiction of the AO also merits detailed examination. The notices under Section 142(1) of the Act were issued by the Faceless Assessing Officer, while the penalty was levied by the jurisdictional AO, potentially contravening the provisions of Section 272A(3)(aa) of the Act. This issue requires a fresh look by the CIT(A) on remand.

7.3. The assessee's contention that the penalty was levied without considering the reasonable cause for non-compliance is significant and should have been addressed by the AO and the CIT(A). Failure to consider such explanations would result in a violation of natural justice.

7.4. The Departmental Representative (DR) pointed out that the assessee did not attend the proceedings before either the AO or the CIT(A). However, considering the circumstances, the DR did not object to the matter being remanded back to the CIT(A) for fresh adjudication.

7.5. In view of the above, we deem it fit to restore the matter back to the file of the CIT(A) for fresh adjudication on the merits, after condoning the delay in filing the appeal. The CIT(A) is directed to issue notices to the assessee at the correct email address and provide a reasonable opportunity of being heard before passing a fresh order.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 25 October, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 25/10/2024

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad