

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 Nos.787/Ahd/2024, 788/Ahd/2024 & 789/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2010-11

Shantiji Piraji Suthar Sherpura, Tal.Deesa Banaskantha - 385 535 (Gujarat)	<u>बनाम/</u> <u>v/s.</u>	The ITO Ward-4 Palanpur - 385 001
स्थायी लेखा सं./PAN: BWOPS 8650 P		

अपीलार्थी/ (Appellant)	.....	प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Anil Brahmakshatriya, AR
Revenue by :		Shri V.K. Mangla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/10/2024  
घोषणा की तारीख /Date of Pronouncement: 24/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These three appeals by the assessee are directed against the different orders all dated 20-02-2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as the "CIT(A)"] in relation to the Assessment Year (A.Y.) 2010-11, whereby the CIT(A) dismissed the appeal(s) *in limine* due to the delay in filing without adjudicating the issues on merits. These orders were passed by the CIT(A) against the orders of Assessing Officer [hereinafter referred to as the

"AO"] passed u/s 144 r.w.s. 147, along with penalties u/s 271(1)(c) and 271F of the Income Tax Act, 1961 [hereinafter referred to as "the Act"]].

**Facts of the case:**

2. The assessee, **Shantiji Piraji Suthar**, an illiterate farmer residing in a remote village, did not file his return of income for the AY 2010-11, as his sole source of income was agricultural, which is exempt under section 10(1) of the Act, 1961.

2.1. The Assessing Officer (AO) reopened the assessment under section 147 of the Act based on information received through AIR (Annual Information Return) regarding cash deposits amounting to Rs.19,54,457/- in the assessee's bank account during the relevant financial year. Since the assessee did not respond to multiple notices, the AO passed an *ex-parte* order under section 144 read with section 147 of the Act, making an addition of the entire amount as unexplained cash credits under section 68 of the Act.

3. The assessee filed an appeal before the CIT(A) after a delay of more than two years. The delay was attributed to the assessee's illiteracy, lack of understanding of the proceedings (as the notices were in English), and the mistaken belief that agricultural income was not taxable. The assessee submitted an affidavit in support of the condonation of delay, along with additional evidence, including proof of agricultural income and loan statements to substantiate the source of the cash deposits. However, the CIT(A) dismissed the appeal *in limine* solely on the ground of the delay,

without condoning the same or adjudicating the merits of the case, and without considering the additional evidence submitted by the assessee.

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

In ITA No.787/ Ahd/2024

1. *That on the facts of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition made in assessment order passed u/s 147 r.w.s. 144 of the I T Act, 1961 by the Id AO without considering the facts of cases and additional evidences produced during the course of appellate proceedings.*
2. *That on the facts and in law, the Hon'ble CIT(A) has erred in not condoning the delay and decide the appeal in limine.*
3. *The appellant craves to leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal*

In ITA No. 788/ Ahd/2024

1. *That on facts and in law the Hon'ble CIT(A) has erred in confirming the penalty u/s 271(1)(c) vide order passed by the Id AO without considering the facts of cases.*
2. *That the Hon'ble CIT(A) has erred in not condoning the delay and decide the appeal in limine.*
3. *The appellant craves to leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal*

In ITA No. 789/ Ahd/2024

1. *That on facts of the case and in law, the Hon'ble CIT(A) has erred in confirming the penalty u/s 271F vide order passed by the Id AO without considering the facts of cases.*

2. *That on facts and in law, the Hon'ble CIT(A) has erred in not condoning the delay and decide the appeal in limine.*
3. *The appellant craves to leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal*

5. Before us, the Authorised Representative (AR) of the assessee reiterated that the delay in filing the appeal before the CIT(A) was due to his illiteracy and lack of understanding of the notices, which were served in English. The assessee, being under the impression that agricultural income was not taxable, did not act until he was advised by a relative. The assessee's authorized representative submitted that this delay was unintentional and requested that it be condoned, as the assessee had a genuine cause for the delay. The AR further contended that the CIT(A) failed to consider the additional evidence submitted by the assessee and dismissed the appeal without addressing the merits of the case. The representative argued that dismissing the appeal purely on procedural grounds without considering the facts amounted to a denial of natural justice.

5.1. The AR provided detailed evidence explaining the source of the cash deposits made during the relevant financial year. The assessee submitted that the deposits were primarily from the sale proceeds of agricultural produce and loans availed from the State Bank of India. The following documents were submitted as evidence:

- i. **Bank Statement:** The assessee provided a copy of the bank statement from the State Bank of India (A/c No. 30407246859) reflecting the deposits.
- ii. **Loan Account Statement:** A copy of the ledger account from the State Bank of India was submitted, showing a loan of Rs. 8,95,000/- taken by the assessee, which explains part of the deposits in the bank account.

- iii. Loan from Maruti Cold Storage: The assessee also furnished a ledger account from Maruti Cold Storage, where a loan was taken by pledging agricultural produce and land, further corroborating the source of funds.
- iv. 7/12 Extract: The assessee provided the 7/12 extract (land records) to substantiate that he is engaged in agricultural activities, thus confirming that a part of the cash deposits was from agricultural income.
- v. Bills of Agricultural Produce Sale: Copies of sale invoices for agricultural produce were submitted to demonstrate that cash received from these sales was deposited in the assessee's bank account.

6. Upon careful consideration of the facts and circumstances, it is evident that the delay in filing the appeal before the CIT(A) was occasioned due to the assessee's illiteracy, lack of legal knowledge, and genuine misunderstanding regarding the taxability of agricultural income. The assessee's submission, including the affidavit and the supporting documents, indicates that the delay was neither deliberate nor intentional but occurred due to bona fide reasons beyond the assessee's control. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition v. Mst. Katiji [(1987) 167 ITR 471 (SC)]** has held that, while considering the question of condonation of delay, a liberal approach should be adopted to advance substantial justice, particularly where the assessee is a layman or an illiterate individual. In the present case, the assessee, being an illiterate farmer, was not well-versed with the intricacies of tax proceedings, which justifies the delay.

6.1. It is a well-established principle that justice should not be denied on account of technicalities. The appellate authority should ordinarily lean in favor of allowing the parties to present their case on merits. Dismissing the appeal merely on procedural grounds, without affording the assessee an opportunity to present additional evidence or be heard on merits, violates the principles of natural justice. The additional evidence submitted by the assessee, including the bank statements, loan documents, 7/12 extract, and sale bills, substantiate the assessee's claim that the cash deposits were from agricultural income and loans. The CIT(A)'s failure to consider this evidence is unjustified, and the case merits fresh consideration based on these facts.

6.2. The assessee has also raised grounds against the imposition of penalties under **section 271(1)(c)** of the Act (concealment of income) and **section 271F of the Act** (failure to file a return). Since these penalties were levied in consequence of the assessment order, they are dependent on the outcome of the main issue regarding the cash deposits added under section 68. The penalty under section 271(1)(c) of the Act has been levied for concealment of income, which is directly linked to the addition made under section 68 as unexplained cash credits. Since we are remanding the matter back to the CIT(A) to decide the merits of the addition, the penalty under section 271(1)(c) of the Act will also need to be re-evaluated based on the final outcome of the assessment. If the CIT(A), upon reconsidering the merits, finds that the source of the cash deposits is satisfactorily explained (from agricultural income or loans), then the penalty under section 271(1)(c) of the Act would not be warranted.

6.3. The penalty under section 271F of the Act as levied for failure to file the return of income. The assessee has explained that he did not file the return due to his illiteracy and the genuine belief that agricultural income is not taxable. If the CIT(A) accepts this explanation, the penalty under section 271F may also be reconsidered.

6.4. Since the penalties under sections 271(1)(c) and 271F of the Act are consequential to the main assessment order, these penalties should also be restored to the file of the CIT(A) for fresh adjudication, in line with the decision on the merits of the addition made under section 68 of the Act. The Departmental Representative (DR) did not raise any objection to restore the matter back to the file of CIT(A) in all the three appeals of the assessee.

6.5. In view of the foregoing, we are of the considered opinion that the interests of justice would be best served, if the matter is restored to the file of the CIT(A) with a direction to condone the delay in filing the appeal and decide the issues afresh on merits in all the three appeals of the assessee, after considering the additional evidence submitted by the assessee and granting the assessee a reasonable opportunity of being heard. The penalties imposed under sections 271(1)(c) and 271F of the Act being consequential, are also restored back to the CIT(A) for fresh adjudication. Accordingly, the impugned orders of the CIT(A) are set aside, and the matter is restored to the file of the CIT(A) for fresh adjudication, in all the three appeals of the assessee, in accordance with law. The CIT(A) is directed to condone the delay in filing the appeal and decide the issues on merits, after giving the assessee an opportunity to present his case and additional evidences.

7. In the combined result, all the three appeals filed by the assessee are treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 24 October, 2024 at Ahmedabad.**

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 24/10/2024

*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)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad