

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.530 & 531/SRT/2024**

**Assessment Years: (2012-13)
(Hybrid Hearing)**

Balvant Nandlal Talaviya, B-2/45, Sundaram Park Society, Hansot Road, Ankleshwar, Bharuch - 393001	Vs.	The ITO, Ward – 1, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AEDPT4075K		
(Appellant)		(Respondent)

Appellant by	Shri Hardik Vora, AR
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	09/01/2025
Date of Pronouncement	10/01/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These appeals by the assessee emanate from the orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 13.02.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the same assessment year (AY) 2012-13. Both appeals pertain to same AY.2012-13. With consent of both parties, the appeals were heard together and are decided by this common order for the sake of convenience and brevity. The appeal of assessee in ITA No.530/SRT/2024 is taken as 'lead case'.

2. The grounds of appeal raised by the assessee in ITA No.530/SRT/2024 are as under:

“1. On the facts and circumstances of the case as well as law on subject, the learned CIT(A) has erred in passing order without discussing grounds on merits.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing order without providing enough opportunities to represent the case of the assessee.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing order without considering that assessee was unaware about the hearing notices.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming initiation of re-assessment proceedings.

5. On the facts and circumstances of the case as well as on the subject, the learned CIT(A) has erred in confirming the addition of Rs.18,66,667/- on account of long-term capital gain on sale of land without considering that the said land was not sold by the assessee but was sold by the partnership firm ‘Bhagyoday Developers’, in which assessee is a partner.

6. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the addition of Rs.20,46,967/- u/s 50C of the Act on sale of land without considering that the said land was not sold by the assessee but was sold by the partnership firm ‘Bhagyoday Developers’, in which assessee is a partner.

7. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the addition of Rs.94,24,059/- u/s 68 of the Act on account of unsecured loans.

8. It is therefore prayed that the above addition/disallowance made by the assessing officer may please be deleted.

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

3. Both the CIT appeals filed by the assessee are late by 25 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing the appeal of appeal before the Tribunal. In the affidavit, the assessee stated that he has filed appeal against the order of ITO, Ward – 1, Navsari on 23.12.2019 and confirmed by CIT(A) on 13.02.2024.

The appeal filed before the Tribunal on 08.05.2024. Therefore, there is a delay of 25 days. The submitted that the registered e-mail Id on the Income-tax portal was updated to 'amishkumarrania@gmail.com' on 13.07.2022 when filing the appeal before CIT(A). In Form No.35, the assessee had also provided email ID i.e. 'amishkumarrania@gmai.com' for communication of notices. However, all the notices were issued to 'activevision@ymail.com'. The assessee was completely unaware of the hearing notices and the appellate order. The assessee submitted that in the Month of April, 2024, when his Tax Consultant logged into the portal for routine compliance checks and to review Form 26AS for AY.2024-25, it was discovered that CIT(A) has passed an ex-parte order. Thereafter, the assessee consulted with Shri Hardik Vora, Advocate and he advised to file appeal before the Tribunal. Therefore, the delay has occurred 25 days, which may be condoned by this Tribunal in the interest of justice.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Bench may decide the matter as deemed proper.

5. We have heard both the parties on this preliminary issue of delay of 25 days in filing this appeal. In the affidavit, it is submitted that notices of hearing were not received to the e-mail Id i.e. 'amishkumarrania@gmail.com', which was given in Form No.35 at the time of filing appeal. The notices of hearing were sent to the wrong e-mail Id i.e. 'activevision@ymail.com'. The assessee was unaware of the hearing of

notices and the appellate order. Earlier consultant had not informed the assessee about fate of appeal due to which, the delay of 25 days has occurred in filing appeal before the Tribunal. We find that assessee was not negligent but due to absence of legal advice of the old consultant, there was delay in filing the present appeal. The delay of 25 days was not inordinate and intentional. There was lack of guidance and assistance to the assessee by the old consultant with respect to the procedure and formalities of filing appeal before the Tribunal. Hence, the reasons given in the affidavit for condonation of delay would constitute "sufficient cause" for the delay in filing the appeal. We, therefore, condone the delay and admit the appeal for hearing.

ITA No. 530/SRT/2024 (AY.2012-13):

6. Brief facts of the case are that assessee had filed his return of income for AY.2012-13 on 28.03.2013, declaring total income at Rs.3,29,780/-. The assessee had shown net agricultural income of Rs.2,00,000/-. The assessee with other five co-owners had sold immovable property for document value of Rs.1.12 Crore. However, the Stamp Valuation Authority (SVA) had valued the property at Rs.2,34,91,800/- and charged the stamp duty accordingly. There was a difference of Rs.1,22,91,800/- between the sale consideration and value determined by SVA as per provisions of section 50C of the Act. Various notices u/s 142(1), 129 and show cause notices u/s 148 of the Act were issued but there was non-compliance to the said notices. Hence, the Assessing Officer (in short, 'AO') passed order u/s 144 of the Act because assessee failed to discharge the onus cast on him though he was given

sufficient opportunities. The assessee had not furnished requisite details and documents before AO. The AO made addition of Rs.18,66,667/- on account of long-term capital gain, addition of Rs.20,46,967/- u/s 50C of the Act on account of immovable property and addition of unsecured loan of Rs.94,24,059/- u/s 68 of the Act. The AO determined the total income at Rs.1,36,67,473/- u/s 144 r.w.s. 147 r.w.s. 144B of the Act.

7. Aggrieved by the order of AO, the assessee filed this appeal before CIT(A). There was delay in filing the appeal, which was condoned by the CIT(A). The CIT(A) issued various notices on 09.11.2022, 09.04.2023, 29.01.2024 and 05.02.2024. The assessee neither filed any details nor written submission nor any request for adjournment. Hence, CIT(A) observed that assessee is not interested in pursuing the appeal. He has relied on various decisions and thereafter observed that assessee is not aggrieved with the assessment order and therefore additions/disallowances were confirmed by the CIT(A).

8. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that both AO and CIT(A) have passed *ex parte* orders. He submitted that the non-compliance before the lower authorities was due to circumstances beyond control of assessee. He again referred to the affidavit filed for delay and submitted that non-compliance was also for the same reason. He requested that in the interest of justice, one more opportunity may be given to the assessee to plead his case on merit.

9. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue has relied on the orders of authorities below. He submitted that appropriate cost may be imposed if the matter is set aside to AO.

10. We have heard both the parties and perused the materials available on record. We find that AO had issued various notices on six occasions including the notice u/s 148 of the Act. The assessee had not responded to any of the notices nor filed any submission or details before the AO. The details of notices are at para 3.2 of the assessment order. Due to non-compliance by assessee, AO completed assessment u/s 144 r.w.s. 147 of the Act by determining total income at Rs.1,36,67,470/- against returned income of Rs.3,29,780/-. Before the CIT(A), the assessee filed appeal late which has been condoned by CIT(A). The CIT(A) also issued four notices, which were not complied with. Hence, appeal was dismissed. Before us, the Id. AR submitted that the registered e-mail id in the Income-tax e-filing portal was updated to 'amishkumarrania@gmail.com' but notices of hearing as well as order u/s 250 of the Act were issued to 'activevision@ymail.com'. Due to above reasons, assessee had not complied before CIT(A). Therefore, Id. AR requested to grant another opportunity in the interest of justice. Considering the facts of the case, we are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. The expression "sufficient cause" used in section 253(5) of the Act is sufficiently elastic to enable the Tribunal to apply the law which subserves the ends of

justice. It has been held in a number of cases that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Accordingly, we hold that the interests of justice would be met in case the AO re-examines the entire issue afresh subject to payment of cost of **Rs.15,000/- (Rupees fifteen thousand only)** by the assessee to the credit of the “Gujarat High Court Legal Aid Authority” within two weeks from receipt of this order. Subject to payment of above cost, we set aside the order of CIT(A) and remit the matter back to the file of AO with a direction to pass fresh assessment order in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all details and explanations as needed by the AO by not seeking adjournment without valid reasons. With these directions, the grounds of appeal raised by the assessee are allowed for statistical purposes.

11. Since, we have set aside the order of the CIT(A) and restored the matter to the file of AO, the other grounds become academic in nature and do not require adjudication.

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

ITA No.531/SRT/2024 (AY: 2012-13)

13. This appeal is against the order of CIT(A) dismissing the penalty order passed by AO for AY.2012-13, where AO levied penalty @ 100% of the tax

sought to be evaded on income of Rs.1,33,37,693/-. The CIT(A) confirmed the penalty order passed by AO u/s 271(1)(c) of the Act because assessee did not furnish any details nor any petition for adjournment was filed.

14. The facts of the case have already been discussed at para 6 of this order. After completion of the assessment order u/s 144 r.w.s. 147, dated 23.12.2019, the AO has issued various notices for the penalty proceedings u/s 271(1)(c) of the Act, which has been initiated during the assessment proceedings. Since the assessee did not respond to the notices, the AO has levied penalty u/s 271(1)(c) of the Act amounting to Rs.36,18,310/-. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal because assessee had not complied with the notices issued during appellate proceedings. The reasons given by the CIT(A) are similar to the reasons given in appellate order for the quantum assessment for AY.2012-13 in ITA No.530/SRT/2024 (supra).

15. We have set aside the order of CIT(A) and restored the matter to the file of the AO for fresh assessment after hearing the assessee in ITA No.530/SRT/2024 (supra). Since the matter has been restored to the AO for fresh adjudication, there is no basis at all for levy of penalty u/s 271(1)(c) of the Act. Hence, the penalty order does not survive and the resultant order of CIT(A) is quashed. We make it clear that the AO may initiate proceedings u/s 271(1)(c) of the Act during the fresh assessment proceedings, if required conditions are fulfilled. Accordingly, the ground is allowed for statistical purpose.

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

Order is pronounced in the open court on 10/01/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 10/01/2025

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat