

**आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत**

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 No. **1092/SRT/2024** (AY 2011-12)

*(Hybrid processing hearing)*

Harendrsinh Anupsinh Mahida Limda Faliyu, AT Gothan Gothan Sayan Road, TaL; Olpad, Surat-394 130 <b>[PAN : BHIPM 0689 M]</b>	बनाम Vs	Income Tax Officer, Ward-2(3)(2), Surat, Room No.615, 6 <sup>th</sup> Floor, Aayakar Bhavan, Majura Gate, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	13.01.2025
उद्घोषणा की तारीख/Date of pronouncement	21.01.2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld.CIT(A)] dated 27.08.2024 for assessment year (AY) 2011-12, which in turn arises out of assessment order passed by Assessing Officer under section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.11.2018.
2. Rival submission of both the parties heard and record perused. The Ld. Authorized Representative (Ld.AR) of the assessee submits. The Ld. AR of the assessee submits that Assessing Officer as well as Ld.CIT(A) passed ex parte order without giving fair and reasonable opportunities of being heard to assessee. In fact, assessee was not aware about passing the assessment order passed by the Assessing Officer. The assessee came to know about the

assessment order when his bank account was attached by Income-tax Authority for recovery of demand. The assessee approached before Assessing Officer for supply of assessment order passed under section 144 r.w.s.147 of the Act dated 16.11.2018. The assessee received copy of assessment order on 28/02/2019. Thereafter, the assessee immediately filed appeal before Ld.CIT(A) by narrating all such facts on 11.03.2019. The appeal was filed within 30 days from the receipt of assessment order. The assessee narrated all such facts in Form 35 while filing appeal before Id. CIT(A). However, Ld.CIT(A) dismissed appeal of assessee by not considering such fact. The Ld. AR of the assessee submits that delay in filing appeal was neither deliberated nor intentional rather the assessee was not aware about the passing the assessment order. The assessment order, itself is under section 144 of the Act. The Ld. AR of the assessee submits that assessee has a good case on merit and is likely to succeed if one more opportunity is allowed to contest the case on merit. The Ld. AR of the assessee submits that assessee sold agricultural land which is not capital asset. There was no taxable income of the assessee and the sale consideration was not taxable being consideration of agricultural land and consideration is not liable to capital gains. The Ld. AR of the assessee submits that even on merit, he has good case. The Ld. AR of the assessee submit that even before Ld.CIT(A), assessee furnished various submissions, proof of such submission, as placed on record in the form of screen shot of ITBA portal. The Ld. CIT(A) neither issued any show cause nor given any consideration on the submission and statement of fact furnished by assessee. Therefore, in the interest of justice the matter may be restored back

to the file of Assessing Officer to avoid long drawn process regarding remand report before Ld.CIT(A). The Ld. AR of the assessee undertakes on behalf of assessee to be more vigilant in making timely compliance before lower authorities as and when called for.

3. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities. Ld. Sr-DR for the Revenue submits that Assessing Officer has given several notices which were not complied by the assessee. The Ld. Sr-DR for the Revenue submits that in case, if the Bench is of the view that assessee deserves any further opportunity, the matter may be restored back to the file of Ld.CIT(A) with the direction to assessee to make timely compliance as and when called for.
4. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We find that Assessing Officer passed assessment order on 16.11.2018 under Section 144 r.w.s. 147 of the Act. The Assessing Officer made addition of Rs. 83,61,900/- on account of undisclosed income from capital gain. The Assessing officer added entire sale consideration as long term capital gain. The Ld. CIT(A) confirmed the action of Assessing Officer by not condoning the delay in filing appeal. We find that the assessee categorically contended in the facts mentioned in Form-35 that assessment order was not served upon the assessee. The Ld. CIT(A) neither considered such fact nor verified the record Assessing Officer about the service of assessment order prior to 28/02/2019. We further find that before dismissing the appeal in limine, no show cause notice was given to the assessee. Considering overall facts and circumstances of the case, we find that

there was no delay in filing appeal before the Id. CIT(A) from the receipt of assessment order. Therefore, the delay if any in filing appeal before Ld.CIT(A) is condoned and impugned order is set aside and matter is restored back to the file of Assessing Officer to adjudicate the issues afresh in accordance with law. Needless to direct that before passing the order afresh, the Assessing Officer shall give reasonable opportunity of being heard to assessee. The assessee is also directed to file requisite details, explanation and evidence as and when called for. In the result, the grounds of appeal raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal of the assessee is allowed statistical purposes only.

Order pronounced in the open court on 21/01/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member

Sd/-  
(PAWAN SINGH)  
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 21/01/2025

Dkp Outsourcing Sr.P.S\*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत