

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

ITA No. 1028/Srt/2024 (Assessment Year 2012-13)
(Physical hearing)

Late Krishnaben Bharatkumar Jariwala, Through Legal Heir Bharatkumar Dipak Kumar Jariwala, 4/420, Mapara Sheri, Begampura, Surat-395003. PAN No. AIGPJ 5726 J	Vs.	I.T.O., Ward 2(2)(2), Aayakar Bhavan, Majura Gate, Surat.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri P M Jagasheth, C.A.
Department represented by	Shri Mukesh Jain, Sr.DR
Appeal instituted on	04/10/2024
Date of hearing	06/01/2025
Date of pronouncement	28/01/2025

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 20/06/2024 for the Assessment Year (AY) 2012-13.

The assessee has raised following grounds of appeal:

- "1. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in reopening the assessment u/s 147 of the Act and notice u/s 148 of the Act was issued.*
2. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in making addition of Rs. 31,49,514/- on account of alleged unexplained cash deposits in bank account treated as income from undisclosed sources.*

3. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in initiating Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*
 4. *On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of Income Tax (Appeals) has not offered adequate opportunities to hear the case and passed ex parte order and hence the case may please be set aside and restored back to the CIT(A) or AO.*
 5. *It is therefore prayed that the above addition may please be deleted as learned Members of the Tribunal may deem it proper.*
 6. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee/appellant fairly submits that there is delay of 46 days in filing appeal before the Tribunal. Impugned order was passed by the Id. CIT(A) on 20/06/2024, however, this appeal is filed only on 04/10/2024, thus, there is delay of 46 days in filing appeal. The Id. AR of the assessee/appellant submits that the delay is not intentional nor deliberate. The appellant could not check ITBA Portal on day to day basis and on checking it in the first week of October, 2024, realized/ came to know that his appeal has already been dismissed by the Id. CIT(A). The appellant immediately filed present appeal before the Tribunal. The Id. AR of the assessee/appellant submits that the assessee has good case on merit and is likely to succeed if one opportunity is allowed to contest the case on merit. The Id. AR of the assessee/appellant submits that the delay is not intentional nor deliberate and may be condoned and the matter may be restored back to the file of Assessing Officer for passing the assessment order afresh. The Id. AR of the

assessee/appellant submits that there is no inordinate delay and it may be condoned.

On merit of the case, the Id. AR of the assessee/appellant submits that the Assessing Officer dismissed the appeal in ex parte proceeding without giving fair and reasonable opportunity to the assessee. The assessee while filing appeal, provided e-mail address jagashthca1@gmail.com, however, on checking ITBA Portal, it was found that the notice under Section 250 of the Income Tax Act, 1961 (in short, the Act) were issued on the e-mail bharatjariwala9@gmail.com thus, no notice was received by the assessee. Similarly, the impugned order was also not served through e-mail provided in Form-35. The Id. CIT(A) dismissed the appeal for want of submission. The Id. AR of the assessee/appellant submits that the Assessing Officer made addition of Rs. 31,49,514/- on account of cash and other credit in the bank account of assessee. The Id. AR of the assessee/appellant submits that the Assessing Officer as well as Id. CIT(A) has passed order for want of submission. The Id. AR of the assessee/appellant submits that the matter may be restored back to the file of Assessing Officer with liberty to file detailed written submission. The Id. AR of the assessee/appellant submits that he undertakes on behalf of assessee to be more vigilant in future in making compliance.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue has supported the orders of the lower authorities. The Id. Sr. DR for the revenue submits that the assessee was given ample opportunities by the Assessing Officer as well as by the Id. CIT(A). The Id. CIT(A) has allowed five opportunities as recorded in para 5 of impugned order. The Id. Sr.DR for the

revenue submits that the assessee deserve no further leniency. On the plea of condonation of delay, the Id. Sr.DR for the revenue submits that no reasonable explanation is offered by the assessee and delay may not be condoned.

4. We have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. First we shall consider the plea of condonation of delay, we find that the assessee while filing appeal, provided e-mail address jagashthca1@gmail.com but the notices were sent on the e-mail bharatjariwala9@gmail.com, so the assessee has not received any notice. Thus, considering the overall facts and circumstances of the case that the Id. CIT(A) has passed ex parte order in absence of any proper response, therefore, we condone the delay of 46 days in filing appeal before the Tribunal. Further considering the fact that the Assessing Officer as well as Id. CIT(A) has passed ex parte order. The Assessing Officer made addition on account of cash/credit entries in the bank from undisclosed sources. Before us, the Id AR of the assessee undertook to make proper compliance before the Assessing Officer as and when called for. Therefore, we deem it appropriate to restore the matter back to the file of Assessing Officer to decide the issue afresh in accordance with law. Needless to direct that before passing the order on merit, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee. The assessee is also directed to be more vigilant in future and in making proper compliance and not to make any default in responding the notices issued by the Assessing Officer. The assessee is also directed to file detailed written submissions as well as evidences to support his case. With this direction, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order announced in open court on 28th January, 2025.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 28/01/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat