

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 Nos.1030 and 1031/SRT/2024
(AY 2010-11)
(Physical court hearing)

Ghanshyam K Kevadiya, HUF, B-501, Sarovar View, Opp. Dabholi SMC Garden, Dabholi Gam, Surat-395 004 [PAN : AAEHG 3968 F]	बनाम Vs	Income Tax Officer, Ward- 1(3)(6), Surat, Aayakar Bhavan, Majura Gate, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, CA
राजस्व की ओर से /Revenue by	Shri Minal Kamble– Sr-DR
सुनवाई की तारीख/Date of hearing	21.01.2025
उद्घोषणा की तारीख/Date of pronouncement	22.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of National Faceless Appeal Centre, Delhi /Commissioner of Income Tax (Appeals) [for short to as "Ld.CIT(A)"] dated 20.11.2023 and 23.11.2023, one appeal in against quantum assessment and other in penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 23.03.2018. Both appeals are arising out same assessment year (AY) 2010-11. Therefore, with the consent of both the parties, both the appeals were clubbed, heard together and are decided by common order to avoid conflicting decision. The quantum appeal in ITA No.1030/Srt/2024 is treated as lead case. The assessee has raised the following grounds of appeal:-

"1. On the facts and in circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in re-opening the assessment u/s 147 of the Act and issuing notice u/s 148 of the Income Tax Act, 1961.

2. On the facts and in circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in passing the best judgment u/s 144 rws. 147 of the Income Tax Act.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.23,31,00/- being the cash deposit in bank account treating the same as income from other sources.

4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in not considering the submission filed during the course of appellate proceedings.

5. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in not providing adequate opportunities to hear and explained the case, hence the issue may please be set aside and restore back to the AO or CIT(A) for the sake of interest of natural justice.

6. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has erred in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961.

7.It is therefore prayed that above addition may please be deleted as learned Members of the Tribunal may deem it proper.

8. 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 Ld. Authorized Representative (Ld.AR) of the assessee submits that there is delay of 256 days in both the appeals before the tribunal. The Ld. AR of the assessee submits that delay in filing appeals are neither intentional nor deliberate. The Ld. AR of the assessee submits that first appeal before Id CIT(A) was filed in the year 2017, which later on migrated to faceless regime. The previous consultant of assessee made compliance in response to notice issued by Ld.CIT(A) under section 250 of the Act. Thereafter, order was not

communicated to assessee or his previous consultant. Due to oversight, assessee's previous Authorized Representative could not check-up the e-mail on daily basis and when assessee contracted for update of outcome of his appeal, his consultant checked the ITBA portal and found that appeal has been dismissed on 20.11.2023. The assessee came to know about dismissal of appeal only on 04.10.2024. From the date of knowledge of impugned order, there is no delay, however to avoid technical reasons, the assessee has filed affidavit of assessee for condoning the delay before Tribunal. The Id AR of the assessee submits that there is no delay in filing appeals from the date of knowledge. The assessee is not going to be benefitted in filing appeal belatedly. The assessee has a good case on merit and is likely to succeed if the appeals are heard on merit. The Ld. AR of the assessee submits that delay may kindly be condoned.

On merit of the case, Ld. AR of the assessee submits that assessee has raised multiple grounds of appeal, however, he is pressing only ground No.3. The Ld. AR of the assessee submits that assessment was completed under section 144 of the Act. The Assessing Officer made addition of cash credit as well as other credit in his bank account. The Assessing Officer made addition of credit of Rs.37,57,606/- @ 8% under section 44AD. However, entire cash deposit of Rs. 23,31,000/- was added. The Assessing Officer treated the credit of Rs.37.57 lacs as business income and taxed the same under section 44AD. Once, the other credits are treated as business receipt, the cash receipt cannot be treated separately. The assessee is engaged in the business of retails trading of clothes, such fact is accepted by the lower authorities. The cash

deposits are part of business receipt. Before Ld.CIT(A) assessee filed complete details, still, the Ld.CIT(A) upheld the action of Assessing Officer. The Ld. AR of the assessee relied upon the decision of CIT vs. Subodh Gupta (2015) 54 taxmann.com 343 (Del) wherein it was held that in absence of any material to show net profit rate, presumptive net profit rate @ 8% as stipulated in section 44AD could be taken for estimation of income though said provision is not applicable to the assessee. The Id AR of the assessee also relied on the decision in CIT vs. Surinder Pal Anand (2010) 192 Taxman 264 (P&H) 242 CTRE 61 (P&H) [29.06.2010) and CIT vs. Subodh Gupta 229 Taxman 367 (Delhi)

3. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that in the application for condonation of delay, assessee has not disclosed reasonable and plausible cause for condoning the delay. The Ld. Sr-DR for the Revenue submits that the delay should not be condoned as the assessee has not disclosed reasonable and plausible cause. Regarding merit of the case Ld. Sr-DR for the Revenue supported the order of lower authorities.
4. We have considered the preliminary submissions of both the parties and perused the record carefully. On the plea of delay, we find that the Ld.AR of the assessee has vehemently submitted that there was no intentional or deliberate delay. The assessee filed appeal immediately on coming to know about the dismissal of appeal. On considering the submission of assessee and facts of the case, we are of the view that the delay in filing all the appeal before Tribunal is not deliberate or intentional or gross negligence on part of

assessee, therefore, considering the principle that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred, therefore we find that the explanation given by assessee for condonation of delay is reasonable one. Hence, the delay in filing both appeals are condoned. Now advertent to the merit of the case.

5. We find that during assessment the Assessing Officer (AO) noted that assessee has made cash deposit of Rs. 23,31,00/- in his bank account. Further there was a credit of Rs. 39,57,606/- thus aggregating of total Rs. 62,88,606/- in the same bank account. The AO that on show cause to assessee, the assessee filed to file reply and source of such cash and other credits. The AO treated the credit of Rs. 39.57 lacs and business income and taxed the same by applying provision of section 44AD and estimated income @ 8%, thereby added Rs. 3,16,608/-. However, the entire cash of Rs. 23.31 lacs were added separately. Thus, the AO made total addition of Rs.26,47,610/- (23,31,000+3,16,608). On appeal before CIT(A), the assessee filed detailed submission as noted in para-4 of impugned order. Though, the contents of assessee's submissions are not recorded by Id CIT(A). The Id CIT(A) confirmed the action of assessing officer was upheld. We find that Id CIT(A) in last page of his order has accepted that the assessee was engaged in the business of retail trading of cloths. In our view, once the business of assessee is accepted by Id CIT(A), the credit in the bank statement either by way of cash or other credit has to be considered together for the purpose of estimation of business profit. The Hon'ble Delhi High Court in CIT vs. Subodh Gupta (supra) held that

in absence of any material to show net profit rate, presumptive net profit rate @ 8% as stipulated in section 44AD could be taken for estimation of income though said provision is not applicable to the assessee. Thus, in view of the above factual and legal discussions, we direct the AO that 12% on the cash deposits i.e. on Rs. 23,31,000/- is also be considered as business income of the assessee. In the result, the ground of appeal raised by the assessee is partly allowed.

6. In the result, assessee's appeal ITA No.1030/SRT/2024 is partly allowed.
7. Now we take **ITA No.1031/Srt/2024**. We find that there is similar delay in filing the present appeal. The assessee has raised similar plea for condoning delay in filing this appeal as raised in ITA No. 1030/Srt/2024, which we have allowed. Thus, following the principal of consistency, the delay in this appeal is also allowed with similar directions. So far as penalty levied under section 271(1)(c) is concerned, we find that AO levied penalty @ of 100% of tax sought to be evaded on the addition of Rs. 26,47,608/- vide order dated 23.03.3018, which was upheld by CIT(A). Considering the fact that ultimately the additions upheld by us is only on estimation of income in the quantum assessment. It is settled position in law that no penalty is leviable on estimation of income. Thus, entire penalty is delated. In the result, the ground of appeal raised in this appeal is allowed. In the result, this appeal is allowed.

Order pronounced in the open court on 22/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member
सूरत / Surat Dated:22/01/2025
Dkp Outsourcing Sr. P.S*

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

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