

**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.916 and 917/SRT/2024**  
(AY 2017-18)

*(Physical court hearing)*

Sandipbhai Jamiyatbhai Patel AT Post Piparia, Tal. Mandvi, Surat-394 104 <b>[PAN : BVGPP 0297 N]</b>	बनाम Vs	Income Tax Officer, Ward-1, Bardoli, Room # 05, Income Tax Office, Aayakar Bhavan, Opp. Jalaram Mandir, Station Road, Bardoli-394 601
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Suresh K Kabra, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	18.02.2025
उद्घोषणा की तारीख/Date of pronouncement	19.02.2025

**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)"] all dated 26.07.2024, one appeal is against quantum assessment and other in penalty levied under section 272A(1)(d) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 21.02.2022. Certain facts in both the appeals are common hence, with the consent of 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.916/Srt/2024 is treated as lead case. The assessee has raised the following grounds of appeal:-

*"1. The Ld. CIT(A)-NFAC has erred and was not just and proper on the facts of the case and in law in considering the appeal as filed beyond the limitation & dismissing the same, without referring to submission & statement of facts.*

*3. Prayer*

*3.1 The Ld. CIT(A)-NFAC may be directed to consider the appeal on filed in time & adjudicate accordingly.*

*3.2 Personal hearing may be granted.*

*3.3 Any other relief that your honours may deem fit may be granted.*

*4. The assessee craves leave to add, amend, modify alter or delete any of the grounds at the time of hearing."*

2. Rival submissions of both the parties have been heard and record perused.

The Ld. Authorized Representative (Ld.AR) of the assessee submits that *ex parte* assessment order was passed against the assessee on 01.10.2019. The assessment order was not served upon the assessee. The Ld. AR of the assessee submits that assessee resides in a remote area in village, Mandvi. In April, 2022, the bank account of assessee was attached for recovery of outstanding tax demand for assessment year 2017-18. On coming to know about such attachment, assessee approached the Assessing Officer (ITO Bardoli-1) and filed application for knowing the reasons of attachment of bank account and for supply of order, if any. The assessee filed an application before Assessing Officer, which was duly received by official of ITO, Bardoli-1 dated 12.04.2023. On filing such application, assessee was supplied copy of assessment order and penalty order passed on 21.04.2023. The assessee immediately filed appeal before Ld. CIT(A). In the statement of fact in Form-35, the assessee clearly stated that assessment order which was passed *ex parte* was not received by assessee and it was received by assessee on 21.04.2024 and the appeal was filed within prescribed time of 30 days from

the date of communication of impugned order. However, Ld. CIT(A) dismissed appeal of assessee without issuing any show cause notice or seeking any explanation from assessee, which is utter violation of principles of natural justice. The Id. AR of the assessee submits that there was no intentional or deliberate delay in both the appeals before Ld. CIT(A) as the *ex parte* assessment was never served upon assessee. The assessee has a good case on merit and is likely to succeed, if one more opportunity is given to assessee to contest the additions on merit. The Ld. AR of the assessee submits that delay in filing appeal before Ld. CIT(A) may be condoned and matter may be restored back to the file of Ld. CIT(A) for afresh adjudication on merit.

3. In alternative submission, Ld. AR of the assessee submits that since assessment was also completed under section 144 of the Act, therefore, in the event of filing evidence and submission by assessee before Ld. CIT(A), he may require remand report from Assessing Officer. Therefore, in order to avoid long drawn process of seeking remand report, the matter may be restored back to the file of Assessing Officer for adjudication all the issues afresh in accordance with law.
4. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue submits that Bench may take appropriate view in accordance with law. In case this Bench is of the view that assessee deserves any leniency the specific direction may be given to assessee to make proper compliance before lower authorities.
5. We have considered the preliminary submissions of both the parties and perused the record carefully. On the plea of delay in filing appeal before Id

CIT(A), 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 passing of assessment order. the Id AR of the assessee has also filed copy of application filed before Assessing Officer for obtaining copy of assessment order, though, the contents of such application is in Gujarati language, however, while making submissions, the Id AR of the assessee explained its contents in English. 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 Ld. CIT(A) is not deliberate or intentional nor there was 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. Thus, we find that the explanation given by assessee for condonation of delay is acceptable one. We find one more reason that Id CIT(A) dismissed the appeal of assessee without issuing notice under section 250 of Income Tax Act. Hence, the order passed by Id CIT(A) is set aside. Considering the facts that both the lower authorities passed order ex-parte, hence, the additions made in the assessment order is restored back to the file of Assessing Office to pass order afresh and in accordance with law. Needless to direct Assessing Officer before passing the order afresh, the Assessing Officer shall give reasonable opportunity of being heard to assessee and to file requisite as required and explanation and evidence as and when called for. The assessee is also directed to provide complete details of his cash

deposit and confirmation with complete details of such deposit to the satisfaction of Assessing Officer.

6. In the result, assessee's appeal ITA No.916/SRT/2024 is allowed for statistical purposes.
7. Now we take **ITA No.917/Srt/2024**. Considering the facts that the additions in the quantum assessment is restored back to the file of Assessing Officer, therefore, the penalty levied in ex-parte order under section 272(1)(d) is also restore to for fresh adjudication after allowing opportunity to the assessee. In the result, the ground of appeal raised in this appeal is allowed for statistical purpose.
8. In the result, this appeal is allowed for statistical purpose.

Order pronounced in the open court on 19/02/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member  
सूरत / Surat Dated:19/02/2025  
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 आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत