

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.**

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.411/RJT/2023

निर्धारणवर्ष / Assessment Year: (2014-15)

(Hybrid Hearing)

Bharat Nathabhai Barad Prop. of M/s. Vinesh Enterprise, Village: Savani, Tal.: Veraval, Veraval - Kodinar Highway, Dist.: Gir Somnath-362 268.	Vs.	The Income Tax Officer, Ward-4, Veraval.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AVJPB6301K		
(Appellant)		(Respondent)

Appellant by : Shri Kalpesh Parekh, Ld. AR

Respondent by : Shri B.D. Gupta, Ld. Sr. DR

Date of Hearing : 26/11/2024

Date of Pronouncement : 18/02/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by assessee, pertaining to Assessment Year 2014-15, is directed against the order passed by the Commissioner Of Income Tax (Appeal), vide order dated 11/06/2022, which in turn arises out of an order

passed by the Assessing Officer, dated 18/12/2017, u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961.

Grounds of appeal

- 1. The re-assessment order passed u/s. 143(3) r.w.s. 147 of the Act is bad in law.*
- 2. The reopening of the assessment u/s, 147 of the Act is bad in law.*
- 3. The learned Assessing Officer has erred in law as well as on facts in making the huge addition of Rs.61,39,000/-u/s. 69 r.w.s. 115BBE of the Act on account of alleged unexplained cash deposits. The learned CIT(A) has erred in confirming the same and dismissing the appeal of the appellant in limine.*

That at the outset the registrar of this Tribunal inform, that there is a delay of 481 days in filing this appeal. That the Assessee filed an application for condonation of delay supported by affidavit. The relevant part of the affidavit are reproduced herewith.

“2. In the first appellate proceedings, appeal has been decided ex-parte and dismissed in limine for want of prosecution by the Hon'ble CIT(A), National Faceless Appeal Centre vide order u/s. 250 of the Act dated 11.06.2022.

3. Considering the date of order u/s. 250 of the Act issued online, the present appeal was required to be filed within a period of 60 days i.e. on or before 10.08.2022. However, the same could not be filed within the prescribed time frame due to the reasons explained in detail hereinafter.

4. At first, Your Honours may please appreciate that basically, I am an agriculturist living in a small Village: Savani, Taluka: Veraval, District: Gir- Somnath and besides earnings from agricultural operations, I derived small incomes from trading activities. The year under consideration was the first year of commencement of such trading activities. I am a layman not much conversant with the various provisions of the Income Tax Law and

Procedures prescribed thereunder and that I am facing Income Tax Proceedings for the first time in thy life. For the purpose of accounting and legal compliance, I used to remain dependent on my accountant only.

5. After passing of the reassessment order on 18.12.2017 making the huge addition of Rs.61,39,000/-u/s. 69 r.w.s. 115BBE of the Act and giving rise to the heft demand of Rs.30,46,010/- against me I contacted a firm of chartered accountants at Rajkot as per the instructions of my said accountant and I have been advised to file an appeal before the Hon'ble CIT(A) against the said reassessment order. Accordingly, I had appointed the said firm of chartered OLL-accountants as authorized representative and appeal was e-filed through them.

6. However, in the month of January, 2023, I suddenly informed that the penalty order us. 271(1)(c) of the Act has been passed against me and a penalty of Rs.18,93,615/- is also levied. At this juncture only. I came to know that my first appeal has been dismissed in limine by the Hon'ble CIT(A) vide appellate order dated 11.06.2022.

7. Thereafter, on asking about the remedy available, if any, against the impugned ex-parte order u/s. 250 of the Act, I have been recommended that. There is a remedy available in the form of an appeal before the Hon'ble ITAT against the impugned order under the provisions of Section 253 of the Act but the prescribed time limit of 60 days to avail such remedy was already expired at that point of time. On further deliberation, I have been given to understand that he appeal can be filed before Your Honours with the prayer for condonation of delay in view of bonafide sufficient reasonable cause involved in my case.

8. Your Honours may please appreciate that the impugned delay of around a year in filing the present second appeal is not intentional or willful in any manner but the same is caused due to the aforesaid genuine and bonafide reasons Involving lack of requisite knowledge and resources which were beyond the control. It may also be appreciated that I, being an agriculturist, am not much conversant with the Income Tax Law and I am facing the Income Tax Proceedings for the first

time in my life. Under the circumstances, my case deserves lenient approach and sympathetically considerations.

9. In fact, the Hon'ble ITAT, Rajkot Bench in case of Shakti Clearing Agency (P.) Ltd. vs. ITD (80 TTJ 668) has also held that...

The assessee would not gain anything by filing the appeals late. There was no mala fide imputable to the assessee. The delay in filing the appeals was a result of negligence or inaction on the part of the tax consultant. In every case of delay, there can be some lapses of the litigant concerned. That alone is not enough to turn down the plea and to shut the doors against him. If the explanation does not smack of mala fide or it is not put forth as a part of dilatory strategy, the Courts must show utmost consideration to such litigant.

During the course of hearing the Ld, AR. of the Assessee, Submitted that delay was due to that the consultant engaged for legal pursueance in the matter has not discharge his duty and not purused the matter before Ld. CIT(A). That the Ld. AR prayed that delay may kindly be condoned and appeal is to be heard on merit, on the contrary the Ld. DR. of the revenue has not objected to the prayer of the Ld, AR.

We have heard both the parties and perused the Application for condonation of delay in filing the Appeal. We note that the Assessee is illiterate person living in village: Savani, Taluka: Veraval, Distt: Gir Somnath and the Assessee is not known about the legal compliances and the Assessee engaged a legal consultant to look after the case before Ld. CIT(A). The consultant did not comply with the notice issued by Ld. CIT(A) and also did not inform to the assessee about the status of the case. The assessment order was not served upon the assessee. We not that on form no. 35 of the Act. The email id was of the consultant and the assessee do not have the password to assess the website. Assessee has also file the affidavit of previous consultant Shri Dilavarsinh Sadabhai Zala stating about the inability to perused the matter was also filled and affidavit placed on record.

The Assessee came to know about the dismissal of appeal in-limni only when penalty order received by the Assessee. We find in the aforesaid circumstances. That there is sufficient cause in not filling the appeal in time. We are of the view that the Assessee deserve for an opportunity to be heard. Hence the delay in filing the appeal is CONDONED and the appeal of the assessee is to be heard on merit.

A) Statement of facts filed by the appellant:-

1. The return of income was filed by the appellant for the year on 03-12-2015 declaring total income of Rs. 3,52,268/-. Assessment u/s 143(3) r.ws. 147 of the Act was completed determining the total income of Rs. 64,91,268/- The case was re-opened for re-assessment vide notice u/s 148 dated 17-10-2016 on the basis of information available with the A.O. that the appellant had deposited cash of Rs.61,39,000/-in his bank account. The appellant was asked by the A.O. to explain the source of the cash deposits. Finally, the A.O. show caused the appellant vide notice dated 30-11-2017 as to why the amount of Rs.61,39,000/- should not be treated as unexplained cash deposits u/s 69 of the Act. The appellant could not furnish replay to the notices on account of his stay in a village and the A.O. proceeded to make addition of Rs. 61,39,000/-u/s 69 of the Act. Total income of the assessee is determined as under:

<i>Total Income as per return</i>	<i>-Rs. 3,52,268/-</i>
<i>Add: As discussed in para no.4</i>	<i>-Rs. <u>61,39,000/-</u></i>
<i>Total assessed income</i>	<i>-Rs. 64,91,268/-</i>

That an appeal file by the Assessee before the officer of CIT(A). That the Ld, CIT(A) has issued five notices for hearing the case. Assessee could not submit the reply to notice. Accordingly, the addition of Rs. 61,39,000/- is confirmed. Hence, this ground of appeal taken by the appellant is dismissed.

The Assessee has challenged the legality and validity of order CIT(A) by moving of an Appeal before this Tribunal.

During The Course of Argument, Ld.AR of the assessee submitted that the assessee could not represent the case before the Ld. CIT(A) as well as Ld. AO because of the assessee illiterate and the authorised presentative who was appointed for this job did not pursued the matter. Ld. AR request for an opportunity may kindly be given to the assessee to represent the case.

Ld. DR for the revenue relied on the judgement of the lower authority and not objected to the request of the Ld. AR.

We have heard both the parties and perused the material available on record. We note that the Ld. CIT(A) has passed an ex-parte order on 11.06.2020 where the assessee has not responded to the notice issued by the Ld. CIT(A), since the assessee did not explain the cash deposited in the Bank.

We note that according to the order of the Ld. CIT(A), notice issued to the assessee 06.01.2022, 10.03.2022, 25.03.2022, 07.04.2022, 17.05.2022. Science there was no response to notice by the assessee, the appeal of the assessee was decided on the bases on the material available on record. However, according to the order of the Ld. CIT (A), no where it was recorded that the notice were validly served upon the assessee.

We are of the view that the assessee deserves an opportunity to explain his case before the lower authority. We note that Ld. CPC Bangalore has taxed the income at maximum marginal rate without any basis /material available. AR has submitted that due to misunderstanding between the assessee and the counsel. The Assessee could not comply with the notices. Therefore, we are of the view that the matter should be set aside the order of Ld. CIT(A) and remit the matter back to the file of Ld. CIT(A) for fresh adjudication on merit after giving due opportunity to the assessee of being heard.

Order pronounced in the open court on 18/02/2025.

**Sd/-
(A. L. SAINI)
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 18 /02/2025

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot