

**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. 1339/SRT/2024 (AY 2017-18)

(Physical court hearing)

Bajnath Goel 701, Prayag Residency, Parle Point, B/h Sargam Shopping Centre, Surat-395 007 [PAN : AFIPG 6263 N]	बनाम Vs	Income Tax Officer, Ward- 1(2)(1), Surat, Room # 116, 1 <sup>st</sup> Floor, Aaykar Bhawan, Majura Gate, Opp. New Civil Hospital, Surat-395 001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Suresh K. Kabra, CA
राजस्व की ओर से /Revenue by	Shri Ravi Kant Gupta- CIT-DR
सुनवाई की तारीख/Date of hearing	20.02.2025
उद्घोषणा की तारीख/Date of pronouncement	20.02.2025

**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 21.09.2023 for assessment year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer under section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') 06.11.2019. The assessee has raised 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 confirming the addition of Rs.6,31,41,650/- being cash deposits in bank account.*

*2. The Ld. CIT(A), NFAC has erred and was not just and proper on the facts of the case and in law in not condoning the small delay of 41 days in filing the appeal before the CIT(A).*

*3. Prayer.*

*3.1 The addition maybe kindly deleted.*

*3.2 The delay of 41 days may be kindly condoned.*

*3.3 Personal hearing may be granted.*

*2.4 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 assessment was completed under section 144 of the Act on 06.11.2019. The Assessing Officer while passing assessment order estimated income of assessee. The Assessing Officer also made addition on account of cash deposit during demonetization period and other cash and credit in the bank account taxed the same under section 115BBE of the Act. The Ld. AR of the assessee further submits that notice issued by Assessing Officer were not received by assessee which were sent on client.kal@hotmail.com. The assessee came to know the *ex parte* assessment order through e-mail of tax consultant, who handling the income-tax mater of assessee. The assessee left India after closing his textile business at Surat in the year 2017 and started jewellery business in Nepal. On receipt of demand notice, assessee immediately filed appeal before Ld.CIT(A) on 16.01.2020. Though, appeal was filed immediately on coming to know about the addition made in assessment order. However, there was delay of 41 days from the actual date of assessment order. The assessee in Form-35 has mentioned that there is delay in filing appeal due to unavoidable reasons. The Ld. CIT(A) not condone the delay and dismissed appeal as unadmitted. On merit, the Ld CIT(A) also held that the assessee is not interested in pursuing his appeal. Resultantly, the addition made by

Assessing Officer was confirmed. The Ld. AR of the assessee submits that there was reasonable cause for condonation of delay. In fact, the assessment was completed under section 144.

3. The Ld. AR of the assessee further submits that there is delay of 298 days in filing appeal before Tribunal. Delay is neither intentional nor deliberate. The order of Ld.CIT(A) dated 21.09.2023 was received by assessee on 20.12.2023 through his Chartered Accountant/ tax consultant in Surat. The assessee requested him to take appropriate steps for filing further appeal before Tribunal. His tax consultant assured him that matter is being pursued by him. In the meantime, the assessee was detained and lodged in jail by CIB of Nepal on account of violation of local law by the local trades with whom the assessee was having business dealing. Till date, the assessee is in judicial custody in Republic of Nepal and unable to obtain bail to visit India or to take recourse of law against the orders of Income Tax Authorities in India. In the month of December, 2024 the relative of assessee visited Surat and tried to know the status of tax matter and searched the consultant of assessee to know, if any, appeal is filed or not. The relative of assessee (son in law) find out the consultant and on enquiry from him came to know that no further appeal is filed before Tribunal. The son in law of assessee, thereafter engaged him (present AR) and arranged fee for filing appeal before Tribunal. All the necessary step for filing appeal were initiated with the help of relative of assessee. The Id AR of the assessee submits that he has also filed copy of rejection of bail application from Court of Original Jurisdiction as well as of High Court on record. The assessee at this stage is helpless to peruse various

legal action due to his detention in Nepal. The assessee has left no means due to his detention in foreign country. The Id AR of the assessee submits that there was no intentional or deliberate delay in filing appeal either before Id CIT(A) before this Tribunal. The delay may be condoned and the matter may be restored back to the file of Assessing Officer for passing assessment order afresh. He undertakes on behalf of assessee to make compliance. The assessee is interested to peruse his case on merit. The Ld. AR of the assessee submits that assessee has a good case on merit and is likely to succeeds, if one more opportunity is allowed to assessee to contest his case before Assessing. The department will not lose their right to collect legitimate tax, if it is lawfully leviable on the assessee. He made specific prayer that matter may be restored back to the file of Assessing Officer instead of Ld.CIT(A) to avoid the long drawn procedure of remand report, in that event of filing some evidence or submission.

4. On the other hand, Ld. Commissioner of Income tax- Departmental Representative (Ld. CIT-DR) for the Revenue submits that the assessee has not contested even during assessment proceedings. There is huge addition on account of cash deposits as well as other credits in the bank account of the assessee. Sufficient opportunities were allowed to assessee by Assessing Officer. Thus, assessee does not deserve any further opportunity. Even if, the Bench is of the opinion that assessee deserves any further opportunity, matter may be restored back to the file of Ld. CIT(A) only. The Ld. AR of the assessee is making prayer for restoration of matter to the file of Assessing Officer, so that demand may become nil.

5. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We find that the Assessing Officer passed assessment order under section 144 by taking view that during demonetization period, assessee has made cash deposit of Rs.44,16,000/- and little more than Rs.1.00 lacs in his bank accounts during demonetization period. The assessee also made various cash deposits as well as other credits in his bank account aggregating of Rs.6.56 crores. The Assessing Officer made estimation of income of assessee on the basis of trend of last seven years and added Rs.5,28,453/- as regular business income. The assessing officer also added Rs.6.31 crores on account of cash and other credits and taxed the same under section 115BBE of the Act. The Ld. CIT(A) confirmed the action of Assessing Officer by taking view that no submission was filed by assessee nor adjournment sought by assessee. Thus the assessee is not interested to contest his appeal, resultantly appeal was dismissed. The Ld. CIT(A) also rejected the prayer of assessee in condoning the delay in filing first appeal before him.
6. Now, before us, the Ld.AR of the assessee has explained the delay in filing appeal before Ld.CIT(A). On considering the contention of Ld. AR of the assessee and the fact that there was delay of only 41 days in filing appeal before CIT(A). Moreover, the copy of assessment order was not served upon the assessee. Assessment was completed under section 144 of the Act, therefore, considering the overall facts of the case and the submission of Ld. AR of the assessee, we find that there was no inordinate delay in filing appeal before Ld. CIT(A). Otherwise, circumstances suggested that assessee was

interested in contesting the matter / appeal on merit. Hence, delay in filing appeal before Ld. CIT(A) is condoned.

7. Now, considering the plea in condoning delay in filing appeal before Tribunal. We find that impugned order was passed by Ld. CIT(A) on 21.09.2023 and present appeal before Tribunal is filed on 23.12.2024. The Ld. AR of the assessee while making his submission, submitted that impugned order was communicated by his consultant only on 20.12.2023. It was also argued that that on coming to know about the dismissal of appeal, the assessee directed his CA/consultant to take necessary steps for filing appeal before Tribunal. No appeal was filed by said consultant. The assessee was detained / arrested by CIB authority of Government of Nepal. We find that assessee is still in judicial custody in Nepal. The assessee has sent his affidavit duly shown before Notary Public, authorized by Nepal Notary Public Council. On considering the all facts and circumstances of the case, we find that the assessee appointed his consultant to file appeal before Ld.CIT(A), however, such appeal was not filed by said consultant. It has been held in a series of decisions by higher courts that client / assessee should not be suffered due to negligent act of his adviser or consultant. The Hon'ble Jurisdictional High Court in *Multibase India Ltd Vs ITO (2018) 93 taxmann.com 204 (Gujarat)* and in *Jayvantsinh N Vaghela VS ITO (2013) 40 taxmann.com 491 (Gujarat)* held that unless the delay is gross or intentional, malafide or deliberate, delay may be condoned. Hon'ble Apex Court in a celebrated decision in *Collector Land Acquisition Vs Mst Katiji (1987) (2) SCC-107* held that there is no presumption under law the delay in filing appeal is intentional. The parties do not get any benefit in filing appeal

belatedly, rather there is chance that the delay may not be condoned. It was further held that when technical consideration and cause of substantial justice and pitted against each other, the cause of substantial justice may be preferred. Thus, considering overall facts, material placed before us and submission of Ld.AR of the assessee, we find that there was no intentional or deliberate delay in filing appeal before Tribunal, rather due to the circumstances beyond the control of assessee. Hence, delay of 298 days in filing appeal before Tribunal is also condoned.

8. So far as merits of the case is concerned, we find that both the lower authorities have passed the order ex parte proceedings. Keeping in view the peculiar facts of the case, we find that it is a fit case to restore the matter back to the file of Assessing Officer to pass the assessment order afresh. Needless to direct that before passing order afresh, the Assessing Officer shall provide reasonable opportunity to the assessee. The assessee/his AR is also directed to be more vigilant and to make timely compliance of the notice issued by Assessing Officer. With these directions, the grounds of appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 20/02/2025.

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

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

सूरत / Surat Dated: 20/02/2025

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

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By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत