

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

आयकर अपील सं./ITA No.1087/SRT/2024

Assessment Year: (2017-18)

(Physical hearing)

Kiritkumar Mansukhbhai Joshi, B-21, Sanjivani Khand Udhyog Housing Society, Nr.Sajivani Hospital, N.H. No.8, Chalthan, Palsana, Surat - 394305, Gujarat	Vs.	The ITO, Ward – 2, Bardoli
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AFQPJ8443M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

Appellant by	Shri Rajesh M. Upadhyay, AR
Respondent by	Shri Mukesh Jain, Sr-DR
Date of Hearing	13/01/2025
Date of Pronouncement	05/03/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 24.11.2022 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2017-18.

2. Grounds of appeal raised by the assessee are as under:

"1. Ld. CIT(A), NFAC, Delhi has erred in law and on fact to confirm AO's addition/s 68 for Rs.14,24,00/- being cash deposited by the appellant in his bank accounts, during demonetization period by rejecting appellant explanation w.r.t. its source, without there being any contrary evidence on record.

2. Ld.CIT(A), NFAC, Delhi has erred in law and on fact to confirm AO's action of levy of Income Tax at maximum rate u/s 115BBE of the Act."

2. The appeal filed by assessee is barred by 637 days in terms of provisions of Section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing of appeal before the Tribunal. In the affidavit, it has been stated that the matter was handled by Shri Harsh Patel, who made various submissions before AO in assessment proceedings and uploaded online submissions on behalf of assessee. The tax consultant received order of CIT(A) through ITBA portal on 24.11.2022, but did not intimate the same to assessee. It came to his knowledge when recovery proceedings from AO started vide his letter dated 26.09.2024. Thereafter, the assessee consulted Shri Rajesh M. Upadhyay, who advised to file appeal before Tribunal. The assessee submitted that the delay in filling appeal is neither deliberate nor wilful. The Id. AR has requested to condone the delay in filing the appeal.

3. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the Revenue opposed the prayer for condonation of delay. He submitted that the assessee was negligent, inactive and not diligent.

4. We have considered the reasons given by the Id. AR and perused the accompanied documents along with the affidavit. We have also considered argument of Id. Sr. DR. The earlier counsel did not inform the appellant about the order of CIT(A) and follow up action in pursuant to such order. The assessee came to know about the appellate order when AO started recovery proceedings by issue of letter dated 26.09.2024. Thus, we find that the delay in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, the assessee is not

going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delay in filling the appeal is condoned and we proceed to decide the case on merit.

5. Facts of the case in brief are that assessee filed his return of income on 19.09.2017, declaring total income of Rs.4,39,286/- and agriculture income of Rs.4,96,740/-. The case was selected for limited scrutiny. The AO issued show cause notice on 21.09.2018. In response to show cause notice, assessee filed reply online on 08.11.2019. The assessee filed cash book for financial years (FYs) 2015-16 and 2016-17. The assessee had shown opening cash balance of Rs.10,20,337/- as on 01.04.2015; however, no documentary evidences were furnished by assessee in support of opening cash balance. Further, on perusal of bank statement, it was found that no household withdrawal has been made. Thus, claim of assessee that cash was deposited during the period of demonetization out of agriculture sale proceeds and opening cash balance was not justifiable. In view of above, cash of Rs.14,24,000/- deposited during the period of demonetization was treated as unexplained cash credit u/s 68 of the Act and added to total income. The income added was taxed u/s 115BBE of the Act.

6. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). Before CIT(A), assessee filed written submission which are at pages 4 to 5 of the order of CIT(A). The CIT(A) issued 5 notices in response to which assessee filed response reply on 4 occasions, but did not reply to last notice dated 11.11.2022.

The CIT(A) called for remand report from AO, which was received on 06.07.2022. The CIT(A) has observed that assessee could not explain with evidence, the cash deposits during demonetization period. Remand report of AO is at pages 7 and 8 of CIT(A). Thereafter, the CIT(A) has dismissed appeal without any detailed discussion.

7. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book giving details of submission before AO and CIT(A). He has given copy of cash book, details of bank account, summary of source of cash deposits, evidence of agricultural income and copies of ITR and computation of income for AYs.2012-13 to 2018-19. He submitted that Rs.3,61,000/- was received from his wife Nayanaben Kiritkumar Joshi for which confirmation, ITR, computation and bank statements are given at pages 96 to 107 of the paper book. He submitted that there was opening cash balance of Rs.10,20,337/- on account of agricultural income of earlier years and cash receipt of Rs.3,61,000/- from his wife during the earlier year. He submitted that the cash deposit was out of agricultural income of the current year and earlier years as well as opening cash balance. The Id. AR mainly reiterated the submission made earlier before the AO and CIT(A). He has relied upon the decisions in cases of (i) Hemlata Bhatia vs. ITO, ITA No.319/SRT/2023, dated 05.01.2024, (ii) Devjibhai Dhanjibhai Gabani (HUF) vs. ITO, ITA No. 1249/SRT/2007, dated 22.01.2010 and (iii) Takhatsinhji J. Thakorsaheb HUF vs. ITO, ITA No.2480/AHD/2009, dated 08.01.2010.

8. On the other hand, learned Senior Departmental Representative (Id. SR. DR) for the Revenue supported the order of lower authorities. He submitted that the AO has considered the bank account as well as cash book and made the addition. The CIT(A) has also called for the remand report from AO and decided the issue thereafter. Hence, the addition made by the AO and sustained by CIT(A) should not be disturbed.

9. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Id. AR. We find that the AO has made the addition by not accepting submission of the assessee regarding the source of cash deposit. The CIT(A) has called for the remand report from the AO, which is reproduced at page 7 and 8 of the appellate order. He has not forwarded copy of the remand report to the assessee for rejoinder and dismissed the appeal without passing a speaking order. The submissions and evidences given by the appellant has not been considered and the reasons for non-acceptance of the submission is not mentioned in the appellate order. Considering these facts, we find that the CIT(A) has not passed an order as per the mandate of section 250(6) of the Act and dismissed the appeal of assessee without considering submission and evidence given by the assessee. The order passed by the CIT(A) is clearly violative of the express provisions of section 250(6) of the Act, which provides that the appellate orders of the CIT(A) are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decisions. The underlying rationale of the provision is that such orders are

subject to further appeal to the appellate Tribunal. Speaking order would obviously enable a party to know precise points decided in his favour or against him. Considering the facts and circumstances of the case and the fact that the assessment order was confirmed by CIT(A) in a summary manner, we are of the considered view that the assessee deserves one more opportunity to contest his case on merit. In the interest of justice, we set aside the order of CIT(A) and remit the matter back to the file of CIT(A) with a direction to pass fresh order in accordance with law after granting adequate opportunity of hearing to assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by CIT(A) by not seeking adjournment without valid reason. Since, we have remitted the file back to CIT(A) for *de novo* adjudication, the other grounds are not adjudicated, being academic in nature.

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

Order is pronounced on 05/03/2025 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 05/03/2025

SAMANTA

Copy of the Order forwarded to:

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

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat