



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND**

**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.954/RJT/2024

Assessment Year: (2015-16)

(Hybrid Hearing)

<b>P Three Construction Co.</b> C/o, Kutchi Patel Agency Beru Road, Super Market, Nakahatrana Gujarat – 370615	Vs.	<b>The ITO Ward-2,</b> Aayakar Bhavan, Sector-9, Ward-2, Bhuj
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AAKFP7536N</b>		
(Appellant)		(Respondent)

**Appellant by** : Shri Mehul Ranpura, Ld. A.R.

**Respondent by** : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

**Date of Hearing** : 04/03/2025

**Date of Pronouncement** : 18/03 /2025

**आदेश/ ORDER**

**PER DINESH MOHAN SINHA, JM:**

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”] vide order dated 18.10.2022, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short “the Act”), vide order dated 27.12.2017.

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

1) *The grounds of appeal mentioned hereunder are without prejudice to one another.*



2) *The order of the Ld. AO in so far as he assessed the total income at Rs. 43,27,810/- as against the returned income at Rs. 5,27,810/- is totally bad on facts as also in law.*

3) *The Ld. AO erred on facts as also in law in making adding Rs. 38,00,000/- on the alleged ground that the appellant failed to offer contract income of Rs. 38,00,000/- received from M/s. Katira Construction Ltd. The addition made is totally unjustified on facts as also in law and deserves to be deleted and may kindly be deleted.*

4) *The Ld. AO erred in initiating penalty u/s. 271(1)(c) of the Act.*

5) *The Ld. AO erred in charging interest u/s. 234A, 234B, 234C and 234D of the Act.*

3. That at the outset, the registree noted that this tribunal has being into the notices, that the appeal filed delay for 370 days by the assessee. Therefore, the assessee filed an application for condonation for delay and affidavit, which is mentioned below:

*"1) I am working as accountant consultant of P Three Construction Co. (Firm)*

*2)The assessment in the case of firm was finalized vide order u/s. 143(3) of the I. T. Act, 1961 dated 27.12.2017 assessing total income at Rs. 38,00,000/- after making Addition of Rs. 38,00,000/-*

*3) In an appeal filed, the NFAC, Delhi has vide order dated 18.10.2022 in appeal no. CIT(A), Rajkot – 3/10491/2017-18 dismissed the appeal ex-parte without allowing sufficient opportunities to represent the case.*

*4) The above stated order has been served on my email id [itrdcc@gmail.com](mailto:itrdcc@gmail.com) which is registered with income tax department. However, as i am also working as accountant of other organization, and used to receive number of emails in my office in respect of many of clients, due to such multiple emails, I was not regularly accessing all emails. Therefore, notices issued u/s. 250 of the Act in case of firm remained unattended and appeal finalized ex-parte by the CIT(A).*

*5) Now it has to our knowledge that the appeal in the case of the firm has been decided ex-parte. In this regard we express our deep apology for nor remained cautious in accessing the emails."*

4. We noted that accountant of the firm, who was looking after the litigation of the assessee before the Ld. CIT(A) has missed to give attention to the notice



received on e-mail, because the accountant working with various organization whereby e-mail Id were mixed and the accountant has also expressed the apology for non attending the appeal. Since, the assessee was unaware about the proceedings going on before the Ld. CIT(A). We noted that there is sufficient cause for not complying the notice of hearing issued by the Ld. CIT(A). Therefore, we condoned the delay and heard the appeal on merit.

5. Brief facts of the case are that the appellant, a partnership firm, is assessed to tax by the income tax officer, ward-2, Bhuj- kutch. He is engaged in business of construction under the name and style “M/s. P Three Construction Co”. Regular books of account are maintained and are audited u/s. 44AB of the Income Tax Act, 1961. Return of income for the assessment year under consideration was filed on 15.09.2015 declaring total income at Rs. 5,27,810/-. The assessment was finalized vide order u/s. 143(3) of the Act dated 27.12.2017 assessing the total income of appellant at Rs. 43,27,810/- wherein the Ld. AO made addition of Rs. 38,00,000/- on the alleged ground, that the appellant failed to offer contract income of Rs. 38,00,000/- received from M/s. Katira Construction Ltd.

6. The assessee filed an appeal in the office before the CIT(A). The Ld. CIT(A) issued several notices for hearing via e-mail. In response to the notices issued by the Ld. CIT(A), the appellant did not filed any submission. That Ld. CIT(A) has passed and ex-parte order dated 27.12.2017 with following observation:

*“During the appellate proceedings there has been no reply by the appellant. It is clear that the appellant had nothing to say in support of grounds raised. In these facts and circumstances, I agree with the findings of the Assessing Officer and hold that the appellant is unable to substantiate its claim and is not able to controvert the findings in the assessment order. The addition made by the Assessing Officer is therefore confirmed.”*



7. That the assessee challenged the legality and validity of the appeal and filed an appeal against the impugned order dated 27.12.2017 before us.

8. During the course of hearing, the Ld. AR of the assessee submitted that the assessee could not check emails regularly, because old e-mail Id belonged to accountant Kharashankar Vrajlal Vyad and assessee don't know the password of that e-mail Id. However, the Ld. AR of the assessee prayed that one more opportunity to be given to the assessee to represent the case before lower authority.

9. On the contrary, the Ld. Sr. DR relied on the order of the Ld.CIT(A). However, Ld. Sr. DR has not objected to the prayer of the assessee.

10. We have heard both the parties and perused the material available on record. The Ld. CIT(A) has issued several notices for hearing of the case. We note that the assessee has appeared before the Ld. AO and furnished all the documents. It is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Ld. CIT(A) and remit the matter back to the file of the Ld. CIT(A) to adjudicate the issue afresh on merits.



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

**Order is pronounced in the open court on 18 /03/2025**

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

Rajkot

दिनांक/ Date: 18/03/2025

**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

**(True Copy)**

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

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot