

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 964/SRT/2024  
(Assessment Year: 2017-18)

Jignesh Mahendralal Bharuchi, B-28, Jalaram Nagar, Diva Road, Ankleshwar, Bharuch-393001	Vs.	Income Tax Officer, NFAC, Delhi Jurisdiction Income Tax Officer, Ward-2(1), Bharuch
<span style="color: magenta;">[PAN No. AIAPB2397P]</span>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Rasesh Shah, C.A.
<b>Respondent by:</b>	Shri Mukesh Jain, Sr. DR

<b>Date of Hearing</b>	25.03.2025
<b>Date of Pronouncement</b>	08.04.2025

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 29.07.2024 passed for A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in not condoning the delay in filing the appeal before ld. CIT(A).”

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2. *On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in levying penalty of Rs. 50,000/- u/s. 272A(1)(d) of the Income Tax Act, 1961.*

3. *It is therefore prayed that the above penalty levied by the assessing officer may please be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is an individual and is engaged in the wholesale and retail trading of edible oil and sugar. There was a survey under section 133A on 09.03.2017 on the assessee, during which incriminating materials were found and impounded. Upon reviewing the books of accounts, the Assessing Officer discovered that the assessee had a cash balance of Rs. 23,79,554/- as of 08.11.2016, which included Rs. 19,37,511/- received during the period from 01.04.2016 to 08.11.2016. The assessee claimed that the cash balance was from cash sales and earlier receipts related to the business. The assessee filed the return of income for the assessment year 2017-18 on 07.11.2017, declaring a total income of Rs. 4,94,490/-. The return was scrutinized, and notices under sections 143(2) and 142(1) were issued, but the assessee did not respond. Despite several attempts to reach the assessee, including subsequent notices, no compliance was made by the assessee. Accordingly, cash credits of Rs. 19,37,511/- were disallowed by the Assessing Officer and treated as unexplained income under section 115BBE of the Act. Penalty proceedings under sections 272A(1)(d) were initiated by the Assessing Officer for not causing appearance during the course of assessment proceedings. Despite multiple show-cause notices issued to the assessee, no response was received from the assessee. In view

of the repeated non-compliance, a penalty of Rs. 50,000/- was levied under section 272A(1)(d) of the Income Tax Act for failing to respond to notices on five occasions.

4. In appeal, Ld. CIT(Appeals) dismissed the appeal of the assessee on account of inordinate delay in filing of appeal.

5. Before us, the Counsel for the assessee submitted that actual delay before Ld. CIT(Appeals) was for a lesser period owing to Covid period. The penalty order under appeal was passed on 23-11-2021 and due to Covid period, there was a bona-fide reason for delay in filing of appeal before Ld. CIT(Appeals). On going through the facts of the instant case, in our considered view, the assessee has been able to give a reasonable cause for delay in filing of appeal before Ld. CIT(Appeals).

6. Coming to levy of penalty under Section 272A of the Act for failure to respond to notices of hearing, amounting to Rs. 50,000/-, in the case of **Smt. Rekha Rani vs. Deputy Commissioner of Income-tax, Central Circle-8, New Delhi [2015] 60 taxmann.com 131 (Delhi - Trib.)/[2015] 154 ITD 617 (Delhi - Trib.) [06-05-2015]**, the ITAT held that penalty under section 271(1)(b) cannot be imposed for each and every notice issued under section 143(2), which remained not complied with on part of assessee, but it should be restricted to first default only. In the instant case, it is not a case of total non-appearance on part of the assessee during assessment proceedings. As per para 5.5 of assessment order, the Assessing Officer himself stated that the assessee had failed to furnish

satisfactory explanation. Accordingly, it is not a case of non-appearance on part of the assessee during assessment proceedings and the assessment order was passed u/s 143(3) of the Act. Accordingly, in the interests of justice, penalty is directed to be restricted to the first default only amounting to Rs. 10,000/-.

7. In the result, appeal of the assessee is partly allowed.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 08/04/2025**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 08/04/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat