

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.819/SRT/2024

Assessment Year: (2017-18)

(Physical hearing)

Mahmad Atik Farukmiya Sheikh, Masjid Faliya Dehali, Dhagadmal, Valsad - 396126	Vs.	The ITO, Ward – 5, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: DUAPS5433Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	12/02/2025
Date of Pronouncement	17/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from order dated 07.05.2024 passed 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. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-prate order without giving reasonable and sufficient opportunity of being heard.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in making the addition of

Rs.11,75,484/-u/s. 69A of the I.T. Act on account of alleged unexplained money being cash deposits in bank account.

4. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @ 77.25% by attracting S. 115BBE instead of normal tax rate. The addition if any that maybe confirmed should be taxed as business income.

5. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s 115BBE @ 77.25% in a retrospective manner by applying the duly substituted S. 115BBE inserted retrospectively instead of taxing it at 35.54 % as per the old provisions of S. 115BBE.

6. It is therefore prayed that addition made by assessing officer may please be deleted

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

3. The appeal filed by the assessee is barred by limitation by 28 days in terms of provisions of section 253(3) of the Act. The learned Authorized Representative (Id. AR) of the assessee has filed an affidavit giving reasons for delay in filing the appeal of appeal before the Tribunal. In the affidavit, the assessee stated that the CIT(A) passed the appellate order on 07.05.2024. The appeal is required to be filed on or before 06.07.2024. However, the assessee filed the appeal on 03.08.2024 causing a small delay of 28 days. In Form No.35, the assessee had mentioned that the notice/communication may not be sent on the e-mail which was mentioned as "*Whether notices/communication may be sent on email? - No*". However, the CIT(A) sent notices by e-mail as mentioned at Para No. 7 of the appellate order. Because of non-compliance of the notices, which were required to be physically served in view of the option exercised by the assessee, the CIT(A)

passed the *ex-parte* order. Further, Id. AR stated that in Form No. 35, the assessee mentioned the e-mail address as 'amitbhalodia66@gmail.com', which is the e-mail of the tax consultant of the assessee. However, in the ITBA Portal, the e-mail address 'atikshaikh1641988@gmail.com' was mentioned, which is the e-mail of the office of the assessee. The appeal was filed belatedly as the assessee did not receive the order through e-mail mentioned in Form 35. The Id. AR submitted that there was no negligence or wilful attempt to avoid his case and the delay was due to circumstances beyond his control. He has prayed to condone the delay without levying cost and admit the appeal for hearing.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that Bench may decide the issue as deemed proper.

5. We have heard both the parties on this preliminary issue of delay in filing appeal. We find that the assessee was unable to pursue his case as there was lack of guidance and assistance to the assessee with respect to the procedure and formalities of filing appeal before the Tribunal. We find that the reasons given in the affidavit for condonation of delay are reasonable and the same would constitute 'sufficient cause' for the delay in filing this appeal. We, therefore, condone the delay and admit the appeal for hearing.

6. The facts of the case in brief are that the assessee filed return of income on 01.09.2017 for the AY.2016-17, declaring total income of Rs.3,12,800/-. The case was selected for scrutiny under CASS. The assessee deposited cash of Rs.11,75,484/- to his bank account during 09.11.2016 to 30.12.2016. Various notices and show cause notices were issued which were not complied with. The assessee also failed to furnish required details as called for. In absence of details, the AO passed 'best judgment assessment' u/s 144(1)(c) of the Act. The assessee had failed to furnish details of business activities, nature of income earned, details of bank accounts, details of cash deposits made in the bank accounts, sources of cash deposits. The Assessing Officer (in short, 'AO') observed that the assessee received various credits, made cash deposits, but has not filed any submission and details of sources of fund. The assessee was found owner of the money but he has not offered any acceptable and cogent explanation regarding the source of such money found in its bank accounts. The AO relied upon the decisions of Hon'ble Supreme Court in cases of (i) Chuharmal vs. CIT, (1988) 172 ITR 250 and Smt. Srilekha Banerjee & Ors., reported in 1964 AIR 697. The AO found that the sources of cash deposited in the bank account were neither explained nor offered for taxation. The onus was on the assessee to prove that the cash deposits made did not bear the character of income. The AO concluded that the assessee has not filed any submission / details of cash deposit and hence he had made the

addition of Rs.11,75,484/- u/s 69A of the Act and levied tax @ 60% u/s 115BBE of the Act. The AO determined the total income of Rs.14,88,284/- against the return income of Rs.3,12,800/-.

7. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). The CIT(A) issued eight notices through ITBA portal to the appellant on 21.09.2020, 14.12.2021, 15.01.2021, 24.03.2021, 06.03.2023, 12.07.2023, 06.10.2023 and 18.03.2024. The assessee neither complied with any of the notices nor sought for adjournment. The CIT(A) relied upon the following decisions: (i) CIT vs. B. N. Bhattacharya, 118 ITR 461 (SC), (ii) Estate of Late Tukojirao Holkar vs. CIT, 223 ITR 480 (MP HC), (iii) PCIT vs. NRA Iron & Steel Pvt. Ltd., (iv) M/s Chemipol vs. UoI, Central Appeal No.62 of 2009, (v) Dr. P. Nalla Thampy vs. Shankar, (1984) 3 SCC 2142 and (vi) CIT vs. Gold Leaf Capital Corporation Ltd., in ITA No.798 of 2009, dated 02.09.2011, and held that assessee is not interested in pursuing the appeal and the same deserves to be dismissed. On merit, the CIT(A) observed that since the appellant did not make any cogent explanation regarding the sources of cash deposits and supported by documentary evidence and hence, he confirmed the addition made by the AO and dismissed the appeal.

8. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the CIT(A) passed the order u/s 250 of the Act on 07.05.2024

without hearing the assessee in violation of the principles of natural justice. The Id. AR contended that assessee could not represent his case before CIT(A) and the order being an *ex parte*, stood vitiated on account of violation of principles of natural justice. The assessee could not appear before the CIT(A) due to non-service of notice u/s 250 of the Act at the e-mail Id given in the Form No. 35. The assessee had specifically mentioned that the notice/ communication may not be sent on the e-mail by stating as follows: "*Whether notices/communication may be sent on email? – No*". However, the CIT(A) sent all the notices by e-mail as mentioned at para 7 of the appellate order. The e-mail Id for issue of notice and communication was 'amitbhalodia66@gmail.com', but the notices were sent to 'atikshaikh16411988@gmail.com'. The Id. AR has submitted downloaded copies of the notices from the e-filing portal to substantiate his claim. He, therefore, submitted adequate and reasonable opportunity of hearing was not given to the assessee. Therefore, he requested that one more opportunity should be given to the assessee to plead his case on merit before the CIT(A).

9. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He submitted that during the appellate proceedings, the assessee was negligent and non-cooperative. However, he did not have any objection if the matter is restored to the file of CIT(A).

10. We have heard both the parties and perused the materials available on record. It is an undisputed fact that assessee has been non-cooperative during the appellate proceedings. However, Id. AR has submitted copies of the notices issued u/s 250 of the Act and contended that those were served on wrong address and not at the address given in Form No.35. The assessee had filed return of income declaring total income of Rs.3,12,800/-, but in the order u/s 143(3), the AO made addition of Rs.11,75,484/- u/s 69A of the Act. The same was confirmed by CIT(A) based on the findings in the assessment order due to non-compliance by assessee before CIT(A). The CIT(A) had issued eight notices which were sent on wrong e-mail Id and not at the official e-mail Id given in Form No.35. Considering all these facts, we are of the view that the assessee was unable to comply before CIT(A) due to circumstances beyond his control. The Id. AR submitted that non-compliance was neither deliberate nor intentional. He requested that another opportunity may be granted to the assessee to submit all the required explanations and details and plead his case on merit. We are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. The interests of justice would be met in case the CIT(A) re-adjudicates the entire issue afresh. Accordingly, we set aside the order of CIT(A) and remit the matter to the file of CIT(A) for fresh adjudication in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more

vigilant and to furnish all the details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons.

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

Order is pronounced on 17/04/2025 in the open court, as per Rule 34(5) of IT(AT) Rules, 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 17/04/2025

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