

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.773/SRT/2024

Assessment Year: (2017-18)

(Physical Hearing)

Labhuben Manubhai Mangukiya. 24, Ramkrishna Society, L.H. Road, Surat - 395006	Vs.	The ITO, Ward-3(3)(5), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ACZPM1695G		
(Appellant)		(Respondent)

Appellant by	Shri Kamlesh Bhatt, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	04/02/2025
Date of Pronouncement	24/04/2025

आदेश / ORDER

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 23.10.2023 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

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

"1. In view of the facts and circumstances of the case and in particular the Ld. CIT(A), NFAC, new Delhi erred in law and in facts in confirming the addition of Rs.27,00,000/- u/s. 68 and taxing it u/s 115BBE of the Act and hence your Appellant prays that the additions being unfair, illegal and in total disregard of the facts, be deleted.

3. The appeal was filed belatedly by 210 days from the time stipulated u/s 253(3) of the Act. The appellant has filed an affidavit, stating that she is not

conversant with electronic modes of communication and was not able to use internet, website etc. She finds it difficult to keep track of the correspondence in electronic mode and, therefore, she missed the compliance. She received message of penalty proceedings on 29.05.2024 and after discussing with the Chartered Accountant, she filed the appeal against the assessment order on 19.07.2024. The learned Authorized Representative (Id. AR) submitted that the delay was not very long and it was neither deliberate nor intentional. He submitted that assessee is not going to be benefitted by filing the appeal late. He requested that the delay may be condoned and the matter may be decided on merit.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the reasons given by the appellant is not sufficient to condone the delay. He submitted that there was delay in filing appeal even before the CIT(A). He submitted that if the Bench decides to condone the delay, appropriate cost may be imposed on the assessee.

5. We have considered submission of both parties on this preliminary issue delay in filing the appeal. The reasons given by the assessee that she was not familiar with electronic modes of communication is not a valid ground for condoning the delay. We find that the assessee was also negligent in filing the appeal before the CIT(A) as well. The Id. AR requested that the delay may be condoned and the appeal may be decided on merit in the interest of justice. He submitted that the delay is not inordinate and it was not deliberate and

intentional. Considering the submissions of the appellant, we condone the delay subject to payment of cost of **Rs.10,000/- (Rupees ten thousand only)** by the assessee to the credit of 'District Legal Services Authority, Surat' within two weeks from the receipt of this order.

6. The facts of the case in brief are that the assessee filed return of income on 22.02.2018 for AY.2017-18, declaring total income of Rs.2,03,220/- and agricultural income of Rs.86,300/-. The case was selected for limited scrutiny on the issue of "Large value cash deposits during demonetization period as compared to returned income". Various notices u/s 143(2), 142(1) and show cause notice were issued and served upon the assessee. In response to the notices, the assessee furnished computation of income, balance sheet, profit and loss account for AYS.2015-16 to 2017-18, copy of bank statement, cash book and other relevant papers. The assessee had earned income from short-term capital gain (STCG) and from other source of income. The Assessing Officer (in short, 'AO') noticed that assessee has made cash deposit of Rs.27,00,000/- during the demonetization period in her bank account No.058405500931, maintained with ICICI bank. The assessee stated that the earlier cash on hand was deposited in the bank account. She had cash balance of Rs.38,89,878/- as on 31.03.2015. Since the claim was not supported by documentary evidence, the AO issued show cause notice on 18.10.2019, requesting assessee to establish and explain the source of cash deposit of Rs.27,00,000/-, which should be supported by documentary evidences.

However, the assessee did not comply to the said show cause notice. The AO observed that the assessee failed to substantiate source of cash in hand of Rs.38,89,878/- as on 31.03.2015 and, therefore, the source of cash deposit of Rs.27,00,000/- during demonetization period remained unexplained. Hence, he added the same u/s 69A and taxed it u/s 115BBE of the Act.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A), which was late by 20 days. The explanation for the delay was not found to be justified and CIT(A) held that it was gross negligence and inaction by the assessee. However, he decided the appeal on merit. The CIT(A) has extracted the observation of AO at pages 6 and 7 of the appellate order. He has referred to various decisions at para 6 of his order. The decision of the CIT(A) is at para 7 of the appellate order, wherein he has observed that the assessee was accorded sufficient and ample opportunity to explain the source of cash deposit in her bank account during assessment proceedings, but she failed to substantiate her claim of deposit of Rs.27,00,000/-. She also failed to establish that she could herself accumulate such huge amount from the sources disclosed by her. Hence, the AO was fully justified in making the addition of Rs.27,00,000/- as unexplained money u/s 69A of the Act. He also upheld levy of tax u/s 115BBE of the Act.

8. Aggrieved by the order of the CIT(A), the assessee filed appeal before the Tribunal. The Id. AR of the assessee filed a paper book and submitted that the CIT(A) issued four notices, fixing hearing on 09.02.2021, 12.04.2021,

27.01.2023 and 16.10.2023. The assessee has filed replies to the first three notices, which is evident from the table at para 5 of the appellate order. The CIT(A) has, however, not considered the submission made by the assessee on 09.02.2021, which is at pages 1 to 4 of the paper book. The Id. AR has also filed ITRs for AYs.2015-16, 2016-17 and cash book for AY.2016-17 and AY.2017-18 (upto 31.12.2016), which were filed before the CIT(A). He submitted that the returns of income and various details filled in those returns as well as the cash books for AYs.2015-16 and 2016-17 have not been considered by the CIT(A) while disposing of appeal. He requested that the source of cash deposit has been properly explained and hence the addition should be deleted.

9. On the other hand, Id. Sr. DR for the revenue supported the order of lower authorities. He submitted that the return on income was filed after demonetization period. The assessee has not satisfactorily explained as to why cash of Rs.38,89,878/- was held for so long in her personal custody when she had an active bank account. He therefore submitted that both lower authorities have rightly made/confirmed the addition of Rs.27,00,000/-, being cash deposit during demonetization period.

10. We have heard submission of both parties and perused the materials available on record. We have also deliberated upon the decision relied upon by the CIT(A) in his appellate order. There is no dispute regarding the fact that assessee had deposited Rs.27,00,000/- in cash during demonetization period. The assessee had deposited Rs.27,00,000/- in her ICICI bank account No.

58405500931, which is evident from page 59 of the paper book submitted by the appellant. We find that the appellant has contended before AO as well as the CIT(A) that the closing cash balance as on 31.03.2015 was Rs.38,89,878/-. She has however not explained with supporting and corroborative evidence as to how such huge cash balance was carried forward for the next 20 months to be deposited in her bank account during demonetization period on 06.12.2016. However, it is found that the submission of the assessee dated 09.02.2021 to the CIT(A) has not been considered by him while deciding the appeal. In the said submission, apart from prayer for condonation of delay for 20 days, the assessee has also submitted on merit regarding addition of Rs.27,00,000/-. The appellant had also filed ITR-V for AYs.2015-16 and 2016-17 along with computation of income, balance sheet, profit and loss account and capital account. She had also filed cash books for the period 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.12.2016. The above submission and the details were not considered by the CIT(A) while deciding the case. The CIT(A) has dismissed the appeal in a summary manner by stating that assessee miserably failed to establish that she could accumulate such huge amount of cash from the sources disclosed in her income-tax return. She also failed to substantiate the source of the cash deposit. We find that the dismissal by the CIT(A) was without considering the submission and details made by the appellant to him. The reasons for not accepting the contention of the appellant has not been given in the appellate order. Therefore, in the interest

of justice, we set aside the order of CIT(A) and remit the matter to his file for fresh adjudication after granting adequate and sufficient opportunity of hearing to the appellant. The appellant is directed to furnish all details as required by the CIT(A) by not seeking adjournment without valid reason. The ground is allowed for statistical purposes.

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

Order pronounced under proviso to Rule 34 of ITAT, Rules 1963 on 24.04.2025 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 17/04/2025

SAMANTA

Copy of the Order forwarded to:

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS
ITAT, Surat