



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH(SMC), RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.

आयकरअपीलसं./ITA No. 45/RJT/2025

निर्धारणवर्ष / Assessment Year: (2016-17)

(Hybrid Hearing)

Ravi Dhirendrabhai Manek Gandhi Nagar – 01, Opp. Neminath Society, Bungalow No. 02, Shree Ram Krupa, Raiya Road, Rajkot – 360004	Vs.	The Income Tax Officer, WD – 1(1)(1), Rajkot Aaykar Bhawan, Race Course Ring Road,Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:AUTPM7688M		
(Appellant)		(Respondent)

Appellant by : Shri, Rajendra Singhal Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav , Ld. Sr. (DR)
Date of Hearing : 13/03/2025
Date of Pronouncement : 28/04/2025

आदेश / ORDER

Dr. ARJUNLAL SAINI, AM;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), vide order dated 23.11.2023, which in turn arises out of an order passed by the Assessing Officer dated 23.03.2022, u/s 147 r.w.s. 144 and 144B of the Income Tax Act, 1961.

2. The appeal filed by the assessee for assessment year 2016–17, is barred by limitation by 365 days. The assessee moved a petition for condonation of delay, requesting the Bench to condone the delay. The relevant contents of the petition of condonation of delay are reproduced below:



“That during the assessment and appellate proceedings, all the notices were sent on my old and closed email Id, sagar32156@gmail.com . No notice in physical form was received by me.

That in the Form 35 for filing of appeal, the email id given was sagarpatel333363@gmail.com. Hence, the notices and order issued in appellate proceedings were not came into my notice.

That I came to know about passing of appellate orders dated 23.11.2023 only, in January 2025.”

3. Learned Counsel for the assessee submitted before me that based on the contents of the above petition for condonation of delay, the delay should be condoned in the interest of justice, as the assessee has explained the sufficient cause and reason for the delay. However, on the other hand, ld. DR for the revenue submitted that delay should not be condoned, based on the reasons mentioned in the petition for condonation of delay, as the assessee has failed to explain the sufficient cause.

4. I have heard both the parties. A perusal of the affidavit gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned.

5. At the outset itself, Learned Counsel for the assessee submitted that assessee could not comply with the notices because all the notices were issued by the ld. CIT(A), during the appellate proceedings, on old email-id of the assessee, which the assessee was not using. The assessee had informed the department, his new email-id, on which the ld. CIT(A), did not send the notices. As a result, the assessee could not appear before the ld. CIT(A). In addition to this, the assessee wants to submit some additional documents and evidences before the assessing



officer to prove his claim, therefore Id. Counsel argued that the matter may be restored back to the file of the assessing officer for fresh adjudication.

6. On the other hand, Learned Departmental Representative (Id. DR) for the Revenue, did not have any objection, if the matter is remitted back to the file of Assessing Officer for fresh adjudication. However, Id. DR stated that assessee has neither appeared before the assessing officer nor before the Id. CIT(A) and wasting time of the authorities, therefore, cost of Rs. 5000/- may be imposed on the assessee.

7. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. I note that assessee could not plead his case successfully before the Id. CIT(A). Both the Learned Representatives are *ad- idem* at the outset in informing me that CIT(A) has passed his lower appellate order *ex-parte* after noting that the assessee did not appear for hearing fixed on various date. I, therefore observe that assessee's absence on the above sole opportunity of hearing granted by lower appellate proceedings was neither intentional nor deliberate but on account of its non-service of notices on correct email-id of the assessee. The fact also remains that CIT(A) has nowhere dealt with merits of the issue whilst upholding the Assessing Officer's action.

8. Hence, I am of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. I note that 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, I restore the matter back to the file of Assessing Officer 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, I deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28/04/2025.

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

Rajkot

दिनांक/ Date: 28/04/2025

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot