



**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. 603 /RJT/ 2024

(निर्धारणवर्ष / Assessment Year: (2018-19)

(Hybrid Hearing)

Bharatbhai Raysinh Vala BH Kumar Primary School, Devali Dedani, Devali Dedani, Kodinar, Junagadh - 362720	Vs.	The ITO, ward-3(1)(4), Amreli National Faceless Appeal Centre (NFAC), Income Tax Department, Ministry of Finance, Government of India, Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJFPV5265J		
(Appellant)		(Respondent)

Appellant by : Shri Mehul Thakkar, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Date of Hearing : 26/02/2025
Date of Pronouncement : 22/04/2025

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 27.06.2024, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 147 r.w.s. 144 and 144B of the Income Tax Act, 1961 (in short “the Act”), vide order dated 23.03.2023.

2. Grounds of appeal raised by the assessee:

1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-Tax (Appeals) has erred in dismissing appeal filed by



appellant on the ground that there is no sufficient or good reason for condoning the delay in filing appeal with his office without appreciating that the appellant's situation and reasons because of which the delay had happened.

2. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-Tax (Appeals) National Faceless Appeal Center, Delhi has erred in law in not disposing of the following grounds raised before him:

I. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in reopening the scrutiny assessment u/s 147 of the Income-tax Act, 1961 without observing the mandatory requirements of section 148A of the Income-tax Act, 1961.

II. Without prejudice to the above and on the facts and the circumstances of the case and in law, the Ld. AO has erred in making additions of lump sum profit without appreciating the fact that source of cash deposits was evident from the material available on record. There are no enabling provisions under the Income-tax Act, 1961 which empowers the Ld. AO to add lump sum profits in spite of the fact that source of cash deposits is evident.

III. Without prejudice to the above and on the facts and the circumstances of the case and in law, the Ld. AO has erred in making additions by considering the net profit margin of as high as 5% whereas the Milk trading business never allows such a large net profit margin. The Ld. AO also failed by not considering the net profit margin from the future year's Income-tax return and tax audit report.

3. The registree of this Tribunal informs that there is a delay of 325 days in filing the appeal. The Ld. AR of the assessee submitted that the assessee has filed an application for condonation of delay support by the affidavit, relevant para contain reasons for the delay, the same is reproduced.

“3. That I was entirely unaware of the statutory requirements related to maintaining books of accounts, filing income tax returns and tax audit compliance. Due to my lack of formal education and knowledge of tax laws, I did not file an income tax return for the A.Y. 2018-19.

4. That as a consequence of non-filing, the Assessing Officer (AO) initiated reassessment proceedings under Section 147 of the Income Tax Act. 1961. The various notices under section 142(1) were issued to pareshdodiya1177@gmail.com, which is an email ID to which I do not have access. To the best of my knowledge. this email ID might belong to the person



who assisted in applying for my PAN card, and I was never informed about any such communications from the Income Tax Department.

5. That on 25th January 2023, I received a letter from the Income Tax Department through speed post. However, due to my lack of education and legal knowledge. I was unaware of its contents and the necessary compliance requirements.

6. That in March 2024, my tax consultant checked my profile on the Income Tax e-filing portal and discovered that reassessment proceedings had been initiated and concluded against me. Upon further review, he informed me about the adverse order passed and advised me about my right to file an appeal before the Commissioner of Income Tax (Appeals).

7. That as soon as I became aware of the situation, I immediately took the necessary steps and got the appeal filed before the Commissioner of Income Tax (Appeals) on 12th March 2024, which resulted into a delay of 325 days.

8. That the delay in filing the appeal before the Commissioner of Income Tax (Appeals) was not deliberate or intentional but purely due to my lack of awareness about tax compliance and non-receipt of notices at my proper email address. 9. That I respectfully request the Hon'ble Tribunal to condone the delay occurred before the Commissioner of Income Tax (Appeals) in filing my appeal, considering the genuine hardship and bona fide circumstances surrounding my case.”

4. That the Ld. AR of the assessee also draw out attention towards the judgement passed by the Supreme Court has, in the case of Collector Land Acquisition v. Mst. Katiji & Others 167 ITR 471 (SC). That whenever substantial and technical consideration are opposed to each other, cause of the substantial justice must be preferred by adopting justice oriented approach. On the other hand, the Ld. DR for the revenue left the matter to the wisdom of Bench without raising any objection. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a “sufficient cause” for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal filed after expiry of prescribed time, if there is a “sufficient cause” for not presenting appeal within prescribed



time. Thus, taking into account the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone the delay, and admit the appeal and proceed further for hearing.

5. Brief facts of the case that the appellant is an business of distribution and selling of milk products of Girnar Dairy Food Private Limited. The appellant has no income except Income from the above-mentioned business and Interest from savings bank accounts, For the said year, the appellant's Gross Total Income does not exceed the maximum amount that is chargeable to tax. Hence the assessee did not filed return of income. For the year under consideration, by issuing a show cause notice on 17th March, 2022 u/s 148A(b) of the Income-Tax Act, 1961 ("the Act"), Ld AO proposed to reopen the scrutiny assessment. The notice u/s 148A(B) required the appellant to show cause as to why his case shall not be reopened for scrutiny assessment u/s 147. The reopening of assessment was proposed based on the fact that appellant deposited cash of Rs. 1,23,83,100 and Rs. 92,88,230 (total Rs. 2,16,71,330) in his various bank accounts. That the Ld. AO passed an assessment order on 23.03.2023 u/s. 147 r.w.s. 144 and 144B of the Act by an addition of income of Rs. 11,34,619/-.

6. That the assessee has filed an appeal against the order of the Ld. AO, vide order dated 23.03.2023. The Ld. CIT(A) has dismissed the appeal with following observation:

“There exists no sufficient or good reason for condoning inordinate delays of more than 325 days in filing appeal. Accordingly, this appeal is dismissed as barred by limitation. Accordingly I decline to condone the delay of 325 days, and dismiss this appeal of the appellant as barred by limitation.

In view of the above discussion appeal is rendered as inadmissible. Hence stand dismissed.”



7. That the assessee has filed an appeal against the impugned order of the Ld. CIT(A), dated 27.06.2024 before the tribunal.

8. During the course of hearing, the Ld. AR submitted that the notices were issued on email-id pareshdodiya1177@gmail.com, the assessee has not excess of this email-id on website of the Department. The assessee has no knowledge about the notice and proceeding. The Ld. AR of the assessee prayed for one more opportunity should be given to the assessee to represent the case before the Lower Authority.

9. On the other hand, the Ld. Sr. DR has relied upon the order of the Ld. CIT(A) and not objected to the prayer of the Ld. AR.

10. We have heard both the parties and perused the material available on record. We noted that the several notices have been issued by the Ld. CIT(A) for hearings of the case and the order of the CIT(A) is silent on service of notices upon the assessee. That the Ld. CIT(A) has dismissed the appeal of the assessee in limine without going into merits of the case. We further observed that the assessee has not excess of the e-mail id on website of the Department. The assessee have no knowledge about the notices issued by the Ld. CIT(A). We further noted that the Ld. AO passed an assessment order was framed on 23.03.2023 u/s. 144 of the I. T. Act. In interest of justice, we are of the view that an opportunity should be given to the assessee to present his case before lower authority, we set aside the order of the Ld. CIT(A) order dated 27.06.2024 and the Ld. AO order dated 23.03.2023 and remand the matter back to the file of the Ld. AO for fresh adjudication on merits. After giving due opportunity to the assessee and the assessee is further directed to submit all the required documents in support of the income earned during the year.



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

Order pronounced in the open court on 22-04-2025.

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

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

Rajkot

दिनांक/ Date: 22 /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