

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.146/Ahd/2025
Asstt.Year :2017-18

Chintan Navinchandra Shah Plot No.726-C Behind Patel Park Muni Dairy Bhavnagar 364 001 PAN : BDCPS 5781 C	Vs	ITO, Ward-1(1) Bhavnagar.
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(Applicant)		(Responent)
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Assessee by :	Shri B.R. Popat, AR
Revenue by :	Smt.Bhavnaga Gupta Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : 28/04/2045
घोषणा की तारीख /**Date of Pronouncement**: 02/05/2025

आदेश/O R D E R

The present appeal has been filed by the assessee against order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi under section 250 of the Income Tax Act, 1961 dated 24.06.2023 pertaining to Asst.Year 2017-18.

2. At the outset, it is noted that the Registry had flagged the instant appeal as time-barred by 517 days. The assessee has presented his appeal before the Tribunal on 21.1.2025. In response to the defective notice issued by the Registry of the Tribunal, the assessee by letter dated 27.1.2025 explaining the reason for the delay among other that the first appellate

authority uploaded the impugned order in its portal for the time first time only on 7.1.2025, and immediately thereafter, the assessee filed appeal before the Tribunal on 21st January, 2025, and therefore, there was no delay on the part of the assessee. The contents of the letter of the assessee read as under:

“2. In the Scrutiny Summary forming part of the acknowledgement of the above referred appeal, the registry has inadvertently considered the appeal as having been filed belatedly by 517 days, with certain corresponding defects as stated therein. Copy of the acknowledgment so issued is attached herewith for your ready reference.

3. It is placed on record in this regard that though the order of Hon'ble CIT(A), NFAC is dated 24th June, 2023, the same was neither uploaded on the portal nor served in any other way till 7th January, 2025. It may in fact be placed on record that the department inadvertently uploaded a document titled "Closer Order uploaded_ Profit Loss Sign 22 Navin (2).pdf (Copy attached) against the appropriate filed in relation to this appeal in quantum, which had nothing to do with the Appellant or with the underlying appeal in quantum. This fact can very well be cross verified even today from the departmental portal. In view of this conclusively documented error on the part of the department department, the Appellant was of the bonafide belief that the appeal is [pending and the same has not been disposed of.

4. It may further be placed on record that in view of what is stated above and in the penalty proceedings initiated by the AO in due course of time thereafter, the Appellant responded by stating about the pendency of the appeal before the first Appellate Authority. It was in response to this communication that the AO, NFAC intimated vide DIN & Letter No. ITBA/PNL/F/17/2024-25/1071939757(1) of 7th January, 2025 about the appeal having already been disposed of by the first appellate authority and appended the copy thereof on the portal. Copy of this communication is attached herewith for your ready reference and perusal. The order of the first appellate authority was accordingly uploaded on the portal for the first time only on 7th January, 2025. Since the appeal against this order has very much been filed on 21st January, 2025, there is clearly no delay in filing the appeal. In view of these cross verifiable facts, there are clearly no corresponding defects as inadvertently mentioned in the scrutiny summary forming part of the acknowledgment. For the same reason, the question of filing original affidavit in support of petition for condoning the delay in filing the appeal does not arise.”

In view of the above, the assessee pleaded that as the facts are very much verifiable from the record, in fact there was no delay on the part of the assessee in filing appeal before the Tribunal, and therefore, the appeal of the assessee may be admitted and be adjudicated accordingly.

3. Heard both the parties, and gone through the contents of the reply filed by the assessee. In view of the verifiable nature of these facts and the *bonafide* belief narrated by the assessee, which are not disputed by the ld.DR , I am satisfied that there was sufficient cause preventing the assessee from filing the appeal earlier. In fact, the appeal has been filed promptly upon actual availability of the impugned order. Accordingly, the delay, if any, stands condoned and the appeal is admitted for adjudication on merits.

4. The solitary ground raised in the appeal of the assessee is as under:

“1. The learned CIT(A) has erred in law and on facts in dismissing the appeal without going into the merit of the case and thereby confirming the action of the AO in passing an ex parte order assessing the appellant at Rs.35,95,929/- by treating the sum total of all the credits in the specified bank accounts as unexplained.”

5. Before going to the merit of the case, as could be seen from the affidavit filed by the then partner of the assessee firm Shri Chintan Navinchandra Shah, the main grievance of the assessee was that it has not been provided reasonable opportunity to file explanation with supporting documents in support of the source of the amount found deposited in the bank accounts; that during the period the assessee/ partner had serious mental and

physical problems and was under treatment of psychiatrist; that he had retired from the assessee-firm and could not comply with various notices that were issued by the AO during the impugned assessment year, which lead to passing of *ex parte* order; that the alleged notices issued by the ld.CIT(A) during the appellate proceedings were never received by him due to which, the Revenue authorities presumed that the assessee was non-compliant, resulting in the impugned order also being passed *ex parte*, which also was not within his knowledge as he had no knowledge of the income tax portal. Accordingly, it was prayed that the documents in support of the case of the assessee firm filed before the Tribunal maybe treated as additional evidences covered within the exceptions under Rule 9 of the ITAT Rules and the case of the assessee adjudicated accordingly in larger interest of justice.

6. On the other hand, the ld.DR supported the orders of the Revenue authorities.

7. I have heard both the parties, carefully perused the orders of the Revenue authorities, and also examined the affidavit of the partner of the assessee firm filed before the Tribunal along with the statement of facts and other documents submitted during the appellate proceedings.

8. Before adjudicating the matter on merits, it is observed that the assessee, through an affidavit, has raised a fundamental grievance regarding denial of reasonable opportunity to furnish an explanation along with supporting documents in respect of

the amounts found deposited in his bank accounts. The partner has submitted that, during the relevant period, he was suffering from serious mental and physical health conditions and was under the care of a psychiatrist. Furthermore, it is stated that he had retired from the assessee-firm and was unable to comply with the various statutory notices issued by the Assessing Officer, which eventually resulted in the assessment order being passed *ex parte* under section 144 of the Act.

9. It is also contended that the notices allegedly issued by the learned CIT(A) during the first appellate proceedings were never received by the assessee. The statement of facts filed along with form no.35 before the first appellate authority was not also considered. Due to this, the appellate authority proceeded to decide the matter *ex parte*, assuming non-compliance on the part of the assessee. It is further submitted that the assessee had no knowledge of or access to the Income Tax portal and was therefore unaware of the proceedings initiated against him.

10. In light of these submissions, the assessee has prayed for admission of certain documents filed before the Tribunal as additional evidence. It is claimed that these documents fall within the exceptions provided under Rule 9 of the Income Tax (Appellate Tribunal) Rules, 1963, and that they are crucial for a fair and just adjudication of the matter.

11. Having considered the totality of circumstances and in the interest of substantial justice, I am of the considered view that the assessee deserves an opportunity to present his case before

the Assessing Officer. Accordingly, the impugned orders passed by the AO and the learned CIT(A) are hereby set aside. The matter is restored to the file of the Assessing Officer with a direction to adjudicate the case afresh after giving due opportunity to the assessee to file his explanation along with any supporting documentary evidence, including those submitted before the Tribunal as additional evidence.

12. The assessee is directed to extend full cooperation and furnish all required details within the time granted by the AO. The AO shall thereafter decide the matter in accordance with law and after affording due opportunity of being heard to the assessee.

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

Order pronounced in the Court on 2nd May, 2025 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 02/05/2025
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