

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT  
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 07&08/SRT/2025  
(Assessment Year: 2008-09)

Balvir Mohan Mistry, B-2, Aurovilla Appt. Maneklal Road, Nr. Sushrusa Hospital, Navsari H.O. Navsari-396445	Vs.	Income Tax Officer, Ward-1, Navsari
[PAN No. AGPPM9035Q]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Mehul Shah, C.A.
<b>Respondent by:</b>	Shri Mukesh Jain, CIT DR

<b>Date of Hearing</b>	22.04.2025
<b>Date of Pronouncement</b>	06.05.2025

ORDER

**PER BENCH:**

These are appeals filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 28.08.2024 passed for A.Y. 2008-09. Since common facts and issues for consideration are both the years under consideration, both the appeals filed by the assessee for the A.Y. 2008-09 are being taken up for together.

2. The assessee has raised the following grounds of appeal:

**ITA No. 07/Srt/2025 (A.Y. 2008-09)**

"1. On the facts and in the circumstances of the case as well as on the subject, the learned AO has erred in levying penalty of Rs. 4,82,250/- u/s. 271(1)(c) of the Act.

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2. *On the facts and in the circumstances of the case as well as law on the subject, the learned AO has erred in levying penalty of Rs. 4,82,250/- without recording his satisfaction and determining a specific charge as to whether the assessee had defaulted either in furnishing inaccurate particulars of income or in concealment of income while initiating the penalty proceedings.*

3. *It is therefore prayed that the penalty levied by the assessing officer may please be deleted.*

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

**ITA No. 08/Srt/2025 (A.Y. 2008-09)**

“1. *On the facts and in the circumstances of the case as well as on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.*

2. *On the facts and in the 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 re-opening assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.*

4. *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. 15,88,000/- on account of alleged unexplained investment being cash deposits in bank account.*

5. *It is therefore prayed that above addition made by assessing officer may please be deleted.*

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

3. The brief facts of the case are that for the impugned year under consideration, the Assessing Officer observed that the assessee had deposited cash of Rs. 15,88,800/- in his saving bank account. However, since the assessee had not filed return of income, the cash deposited of Rs. 15,88,800/- in the saving bank account of the assessee remained unexplained. Accordingly, the Assessing Officer reopened the case of the assessee under Section 148 of the Act asking the assessee to file the return of income. However, the assessee did not file

return of income in response to notice issued under Section 148 of the Act and also did not respond to various notices of hearing issued by the Assessing Officer. Accordingly, in absence of any response from the assessee, the Assessing Officer finalized the assessment under Section 144 of the Act on ex-parte basis and treated the cash deposited of Rs. 15,88,800/- as the unexplained income of the assessee. Further, the Assessing Officer also initiated penalty proceedings under Section 271(1)(c) of the Act, for concealment of income.

4. In appeal, again despite issuance of various notices of hearing none appeared on behalf of the assessee and accordingly, in absence of any compliance by the assessee the Ld. CIT(A) confirmed the addition in the hands of the assessee with the following observations:

*“4.5 It is, thus, evident that the appellant has no evidence to substantiate the grounds taken and it has not even submitted with any supporting, relevant and cogent arguments/averments, constraining me to, dismiss this appeal as no material change has been brought out by the appellant, to what was available before the AO. Therefore, order is being decided ex-parte and appeal of the appellant is **dismissed**.*

*5.0 In result, the appeal of the appellant is **Dismissed**.”*

5. Further, Ld. CIT(A) also confirmed levy of penalty under Section 271(1)(c) of the Act, on the assessee.

6. The assessee is in appeal before us, against the order passed by Ld. CIT(A) confirming the quantum additions as well as levy of penalty imposed by the Assessing Officer under Section 271(1)(c).

7. Before us, the assessee filed application for condonation of delay, since the present appeals are time barred and submitted that the reason for non-appearance by the assessee before the Tax Authorities were on account of the

fact that the order passed by Ld. CIT(A) was sent on an incorrect email id. In view of the above the delay in filing of the present appeal is hereby condoned.

8. However, on going through the case records, we are of the considered view that there has been deliberate non-compliance and non-cooperation by the assessee, both during the course of assessment proceedings as well as penalty proceedings. It is noted that while the assessee has filed appeal against both the assessment order as well as penalty order, however, when the matter came up for hearing, the assessee has remained totally non-cooperative and evasive. However, in the interest of justice, the assessee is given one more opportunity to present it's case on merits. Accordingly, both the quantum appeal of the assessee as well as the appeal against the penalty order are hereby restored to the file of the Assessing Officer for de-novo consideration. However, we make it clear that in case there is further non-compliance and non-cooperation on part of the assessee, Assessing Officer would be at liberty to pass appropriate orders, in accordance with law on the basis of material available on record. Further, the assessee is hereby directed to pay cost of Rs. 5,000/- individually for the quantum matter as well as penalty matter (total cost of Rs. 10,000/-) to be deposited with the Prime Minister Relief Fund, for the purpose of getting the matter restored to the file of Assessing Officer.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 06/05/2025**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 06/05/2025  
TANMAY, Sr. PS

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat