

आयकर अपीलीय अधिकरण,राजकोट न्यायपीठ, राजकोट।  
IN THE INCOMETAXAPPELLATE TRIBUNAL,  
RAJKOT BENCH: RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER And  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 939/RJT/2024  
(निर्धारण वर्ष/Assessment Year: (2017-18))

Vinod Laljibhai Vadsola Vill. Timbadi, Tal: Morbi- 363 641	Vs.	Income Tax Officer, Ward-1, Morbi-363 641
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: ALNPV 3995 K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Rajendra Singhal, A.R.  
राजस्व की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Sr. D.R.  
सुनवाई की तारीख/ Date of Hearing : 05/05/2025  
घोषणा की तारीख/Date of Pronouncement : 07/05/2025

**आदेश / O R D E R**

**PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the assessee, pertaining to Assessment Order (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax(Appeals) / National Faceless Appeal Centre, Delhi (in short "CIT(A)", dated 09.08.2024, which in turn arises out assessment order passed by the Assessing Officer u/s 147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as "the Act" dated 25.05.2023.

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

*"The grounds of appeal mentioned hereunder are without prejudice to one another.*

1. *The ld.CIT(Appeals) has erred in law and on the facts in holding assessment proceedings as valid through:*

a. *The notice u/s 148 of the Act has been issued by the ITO, Ward-1, Morbi in violation of the provisions of sec. 151A of Act and the*

*Notification of the CBDT published in Gazette that the JAO had no jurisdiction to carry proceedings u/s 148A of the Act.*

- b. The notice u/s 148A(b) of the Act was issued in absence of an information as prescribed u/s 148 of the Act.*
  - c. The notice u/s 148A(b) of the Act was issued, in violation of the provisions of sec. 149 of the Act, as the escaped income was below Rs.50 lakhs.*
  - d. The notice u/s 148A(b) of the Act was issued, in violation of the provisions of sec. 149 of the Act, as there were no any books of account/document or evidence in his possession, which might had revealed escapement of income.*
  - e. The order u/s 148A(d) of the Act was passed without approval of the competent specified authority as per sec. 151(ii) of the Act.*
- 2. The Ld.CIT(A) has erred in law and on the facts in upholding addition of Rs.26,28,000/- u/s 69A of the Act for unexplained investment in LLP.*
  - 3. The Ld. CIT(A) has erred in law and on the facts in upholding addition of Rs.9,00,000/- u/s 69A of the Act for unexplained cash deposits.*

*Your honour's appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on/or before the hearing of appeal."*

3. The appeal of the assessee is barred by limitation by 70 days. The assessee has moved a petition requesting the Bench to condone the delay. The contents of the petition for condoning the delay are reproduced below:

*"1. That I am 49 years old person and I am not conversant with income tax law and rules. Simultaneously, I am aware about email and online proceedings.*

*2. that for tax compliances, I am fully dependent upon tax consultant, who is filing returns of income for their client.*

*3. That for tax compliances, even the mobile and email id of the tax consultant has been used.*

*4. That in the income tax proceedings, all notices were communicated on the email id of my tax consultant.*

*5. That the tax consultant had not responded to majority of the notices issued from time to time.*

*6. That the first appellate order has also been placed over the e-portal only.*

*7. That not a single notice or order has been served on me n physical form. Hence, I was unaware about passing of the appellate order.*

*8. That as soon as I came to know about passing of the first appellate order, I contracted the tax advisor and on his advice, I have filed the appeal before the hon'ble Income Tax Tribunal, without further delay."*

4. It was argued by Ld. Counsel for the assessee that delay was because of unawareness about service of notice on the portal. The assessee did not have any knowledge of impugned order passed on 09.08.2024. It was stated that assessee had no intention in delaying the filing of the appeal. The Ld. AR submitted that the small delay in filing the appeal was neither deliberate nor intentional. The assessee is not going to be benefited by filing the appeal late. The consultant on whom the appeal was outsourced could not inform about any of notice nor the fact regarding impugned order being uploaded on the portal was shared with the assessee, hence, there was small delay of 70 days in filing the appeal had occurred. Therefore, this delay may be condoned, and the appeal may be decided on merit.

5. On the other hand, the Learned Senior DR for the Revenue opposed the prayer of the assessee for condonation of the delay and stated that assessee's appeal may be dismissed.

6. We have heard both the parties on this preliminary issue. We note that the order of the Id.CIT(A) was served on other email-id and it was not served on the email-id registered with the Income Tax Department. Therefore, the assessee whenever, he got the order physically, he immediately took steps to file appeal before the Tribunal. Besides, there was mistake committed by the tax consultant of the assessee and therefore the assessee should not be penalized on account of mistake committed by his tax consultant. We note that this delay is neither intentional nor

deliberate, therefore, in the interest of justice, we condone the delay and admit the appeal of the assessee for hearing on merit.

7. The Ld.AR submitted on behalf of assessee that there was no service of notices on the appellant and Ld. CIT(A) issued the notices on the e-mail i.d of the ITBA portal but same was remained unserved. The Ld. Counsel requested that one more opportunity may be given to the assessee to plead his case before Assessing Officer, as the assessee wants to submit more documents to prove its claim.

8. The ld. DR of the Revenue has submitted that ld. CIT(A) has given ample opportunities to the assessee but there was no response by the appellant, hence the ld. CIT(A) had no alternative but to pass an *ex-parte* order on the materials available on record. However, the Ld.Sr-DR has not objected to the prayer of the appellant if the matter is remitted back to the file of Assessing Officer.

9. We have heard both the parties and perused the materials available on record. It is seen that during the appellate proceedings, the assessee did not submit details and documents before the Ld. CIT(A), as no notices were served on the appellant therefore, the Ld. CIT(A) passed an *ex parte* order. All notices issued through e-mail i.d. of ITBA portal. We note that assessee could not plead his case successfully before the Ld. CIT(A) as notices for hearing were not served on the appellant. We also note that Ld. CIT(A) has not passed the order as per the mandate of provisions of section 250(6) of the Act. That is, Ld. CIT(A) did not pass order on merit based on the material available on record. Hence, we are of the view that one more opportunity should be given to the assessee to plead his case before the Assessing Officer. We 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, in the interest of justice, we 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, the assessee is also directed to contest his stand forthwith. We deem it fit and proper to set aside the order of the Ld. CIT(A) and remit the matter back to the file of Assessing Officer to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 07/05/2025 in the Open Court.

Sd/-  
**(DINESH MOHAN SINHA)**  
न्यायिक सदस्य/Judicial Member

Sd/-  
**(DR. ARJUN LAL SAINI)**  
लेखा सदस्य/ Accountant Member

राजकोट /Rajkot

दिनांक/ Date: 07/05/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अत्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, राजकोट