



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.277/RJT/2025
निर्धारण वर्ष/Assessment Year : 2011-12

Savan Kishorkumar Kanani Vitan Sthapatya, Aarthik Bhawan, 4 th Floor, Near Bombay Garage Petrol Pump, Gondal Road, Rajkot-360 002	बनाम/ Vs	Income Tax Officer, Ward-1(4), Dwarka-361 335
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIMPK 1594 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Rachit Gajera, AR
राजस्व की ओर से/Revenue by : Shri Dheeraj Kumr Gupta, Sr-DR

सुनवाई की तारीख/**Date of Hearing** : **15/05/2025**
घोषणा की तारीख/**Date of Pronouncement** : **22/05/2025**

आदेश/Order

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year 2011-12, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 05.02.2024, which in turn arises out of an order passed by Assessing Officer u/s 144 r.w.s. 147 of the Act on 22.11.2018.

2. The appeal of the assessee is barred by limitation by 346 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. In this case the appellate order u/s 250 of the Income Tax Act, 1961 for the AY 2011-12 has been passed on 5th February, 2024.

2. In view of the same the present appeal ought to have been filed before Hon’ble Income Tax Appellate Tribunal on or before 30th April, 2024. However, this appeal is filed today on 30th April, 2025 and accordingly there is delay of 365 days. The delay has been caused on account of reasonable reasons and circumstances stated hereunder:

a. The appellant is a semi-literate person.

b. The appellant filed his appeal before Id. Commissioner of Income Tax (Appeals) through electronic mode, with email on which the notices of hearing to be sent has been mentioned as samirbhuptani@hotmail.com and mobile number of the Authorized Representative has been provided in the Appeal Memo in Form No.35. Relevant portion from the same is produced hereunder:

17	Address to which notices may be sent to the appellant		
Flat/Door/Block No.	Name of premises/building/village	Road/Street/Post Office	
DEV BHUMI DWARKA			
Area/Locality	Town/City/District	State	Country
JAM-KHAMBHALIA	JAMNAGAR	GUJARAT	INDIA
Pincode	Mobile No.	Email address	361305
361305	9375589116	samirbhuptani@hotmail.com	

c. However, in the course of the appellate proceeding all the notices were sent on the mail-id viz. hdrawaniitr@gmail.com. On verification of the same it was noted that the mail-id is belonging to ex-tax consultant of the appellant who never intimated about the notices to the appellant.

d. Under such circumstances the appellant was completely unaware about the notices of hearing uploaded on portal as well as the appellate order passed by Id. CIT(A) and hence he could not inform to the Authorized Representative in turn. Similarly, since the notices were not sent on the e-mail id of the Authorized Representative he was also unaware of the notices issued and order passed consequently. Copy of the screen shot of the notices issued containing the email id on which they were sent are attached herewith.

e. Recently on 23.04.2025, the appellant has received an e-mail from Central Processing Centre (CPC) regarding recovery of outstanding demand. On receipt of the same the appellant approached the council who has file the appeal before Id. CIT(A). Coy of the e-mail is attached herewith.

f. The AR of the appellant also verified e-proceedings from the Income Tax portal. On verification it was noted that in this case an ex-parte order has been passed by Id. CIT(A) and hence the only remedy available with the appellant was to approach Hon’ble Income Tax Appellate Tribunal against the impugned order.

g. The appellant arranged the appeal fee challan of Rs.10,000 and the same has been paid by him on today i.e., 30th April, 2024 and this appeal, therefore, being filed today with delay of 365 days.”



3. The Ld. Counsel for the assessee explained the reasons for delay, stating that impugned order passed by Ld.CIT(A), on 05.02.2024. However, this appeal is filed on 30.04.2025 before this Tribunal. The Ld. Counsel for the assessee, submits that delay in filing the appeal is neither intentional nor deliberate. In fact, the impugned order was not served upon the assessee either in physical form or by way of e-mail. At the time of filing appeal, the assessee for the purpose of service of notice of hearing has given e-mail id. of samirbhuptani@hotmail.com and mobile number of the Authorized Representative of assessee in Form-35. On verification of ITBA portal, assessee found that notices were sent on the mail i.d viz., hdrawaniitr@gmail.com which was belonging to ex-tax consultant who never intimated to assessee. Then, after, assessee received penalty notice on the updated email- ID and then assessee came to know that order was passed by the CIT (Appeal). When assessee approached his CA, to know about the status of his appeal, and on checking Income tax e-filing portal, his CA came to know about dismissal of appeal. Then assessee immediately filed appeal before Tribunal on 30.04.2025. On further checking ITBA system, it was found that notice of hearing of appeal was sent at the e-mail of previous consultant. The said previous e-mail address does not belong to the assessee or his recent CA, therefore, neither the assessee was aware nor there was any occasions for compliance before Id CIT(A). Resultantly, the Ld.CIT(A) passed *ex parte* order. The Learned Counsel for the assessee, submitted before the Bench that assessee has explained the sufficient cause and reasons for delay of 365 days. Therefore, in the interest of justice the delay may be condoned, and the appeal may be decided on merit.

4. On the other hand, Ld.Senior DR for the Revenue opposed the prayer of the assessee for condonation of delay and stated that delay should not be condoned on such flimsy reasons because it is the duty of the assessee to take



care that the appeal should be filed on time, and because of the carelessness of the assessee the delay may not be occurred. The Ld. Sr-DR also stated that assessee has failed to explain the sufficient cause for condonation of delay. Therefore, delay should not be condoned and appeal of assessee should be dismissed.

5. I have heard both the parties on the preliminary issue. I find that because of the mistake on the part of previous tax consultant, the assessee should not be penalized. I am of the considered view that assessee has explained sufficient cause and therefore delay needs to be condoned.

6. I am of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, I have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others, reported in 167 ITR 471, (1988) SC 897) (7) observed as follows:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.....”

7. When I weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. I note that the reasons given in the affidavit for condonation of delay, was convincing, and the reason would constitute reasonable and sufficient cause for the delay in filing this appeal. Considering the above facts and circumstances of the case, as narrated above, I am of the considered opinion that in the interest of justice, the delay deserves to be condoned and appeal of the assessee should be decided on merits in accordance with law. Accordingly, I condone the delay and admit the appeal of the assessee to adjudicate on merit.



8. On merit, at the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The Id. Counsel for the assessee contended that in the interest of justice, another opportunity to contest the appeal before the assessing officer may be granted to the assessee.

9. On the other hand, learned DR for the revenue submitted that there is no point to give second inning to the assessee and assessee's appeal should be dismissed, as the assessee was negligent before both the lower authorities as he did not appear before both the lower authorities.

10. I have heard both the parties and note that in the assessee's case under consideration, the assessment was carried out u/s 144 r.w.s. 147 of the Act and the impugned order passed by the Id. CIT(A), is an *ex parte* order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee. I note that Id. CIT(A) has not decided the issue in respect of the ground raised by the assessee in Memo of Appeal, as per the mandate of provisions of section 250(6) of the Act. 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, 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 after giving reasonable opportunity of hearing to assessee. Needless to direct that before passing the order afresh, the Assessing Officer shall allow opportunity of hearing to the assessee. The assessee is also directed to furnish all the evidence at the earliest possible of time before Assessing Officer as and when call for.



The assessee is directly to promptly comply with all notices of hearing and in case of any further default on part of the assessee to cause appearance, Assessing Officer would be at liberty to pas order on the basis of materials available on record, in accordance with law. In the result, ground raised by the assessee is allowed for statistical purposes.

11 In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 22/05/2025.

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

राजकोट /Rajkot

दिनांक/ Date: 22/05/2025

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

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट