



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.157/RJT/2025

निर्धारण वर्ष/Assessment Year : 2017-18

Trikambhai Karshanbhai Padasala "Nilkanth Nivas" Near Swami Narayan Temple, Ptel Para, AT: Hemal, Tal: Jafrabad, Dist. Amreli-365 545	बनाम/ Vs	Income Tax Officer, Ward-3(1)(4), Amreli, Income Tax Office, Keriya Road, Amreli-365 601
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJYPP 0623 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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

सुनवाई की तारीख/**Date of Hearing** : **14/05/2025**
घोषणा की तारीख/**Date of Pronouncement** : **23/05/2025**

आदेश/**Order**

Per Dr. Arjun Lal Saini, A.M

Captioned appeal filed by the assessee, pertaining to Assessment Year 2017-18, 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 28.05.2024, which in turn arises out of an order passed by Assessing Officer u/s 143(3) of the Act on 24.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

"1. Amount of tax chargeable on dismissal of appeal vide order passed u/s 250 by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi created demand to extent of Rs.8,61,737/-."



3. The appeal filed by the assessee for assessment year 2017-18 is barred by limitation for 216 days. The assessee filed petition for condonation of delay and requesting the Bench to condoned the delay. The contents of the petition for condonation of delay are reproduced below;

“1. Trikambhai Karshanbhai Padasala having PAN - AJYPP0623M is filing an Appeal Before the Hon'ble Income Tax Appellate Tribunal, Rajkot Bench, RAJKOT on 27/02/2025,

2. The Appeal was required to be filed within due date 27/07/2024 from the date of Order of CIT(A), NFAC- Delhi, but due to but due to the unfortunate demise of our Tax Consultant / Chartered Accountant - Late Hitendrabhai Hargovinddas Sheth on 02nd Jun 2023, we were unable to file the appeal within the stipulated time frame as unaware about the proceeding taken place with the Judicial Authority of CIT (A)- National Faceless Appeal Centre (NFAC), Delhi and which also resulted in Ex-parte Order, I could not file the same within the stipulated time.

3. I had engaged Shri Hitendrabhai Hargovinddas Sheth [Tax Consultant/Chartered Accountant of M/s. Rushikesh Sheth & Co. to represent me in the matter before CIT(A), NFAC-Delhi, but unfortunately, he passed away on 02/06/2023 and consequently Appeal filed before Hon'ble CIT(A). NFAC- Delhi resulted unheard and ex-parte order passed.

4. Despite my best efforts, And we comes to know only when we have received Issue Letter dated 27/01/2025 from Office of Income Tax Officer Ward 3(1)(4), Rajkot Amreli, Amreli intimating that Appeal filed with Hon'ble CIT(A), NFAC has been dismissed, and so we have immediately contacted on Mobile No. of our Tax Consultant cum Chartered Account viz. Shri Late Hitendra Sheth and at that time we comes to know that he was passed away on 02/06/2023. And so I could not obtain the necessary documents and information from our engaged Tax Consultant/Chartered Accountant's office in time, which resulted in the delay.

5. I am filing this affidavit in support of my application for condonation of delay, and I pray that the Hon'ble Income Tax Appellate Tribunal, Rajkot Bench, RAJKOT may be pleased to condone the delay and allow my Petition/Appeal to be heard on merits”.

4. The Ld. Counsel for the assessee, at the outset submitted that, there was a delay for 216 days in filing the appeal because of sudden death of tax consultant of assessee and appeal filed before Ld. CIT(A)/National Faceless Appeal Centre, Delhi, has been vide order dated 28.05.2024, dismissed by Ld.CIT(A)



by passing *ex parte* order. The above stated order of Ld.CIT(A) and notices u/s 250 of the Act were issued online through ITBA portal, which appears to be served on an e-mail address piyushpadasala268@gmail. Since the e-mail address in Form-35 is belonged to tax consultant, who never intimated assessee about such notices and therefore assessee was remained unaware about issuance of such notices of Ld.CIT(A) and appellate proceedings finalized *ex parte* and as a result delay of 216 days in filing the appeal before Tribunal had arisen, which may be condoned in the interest of justice.

5. However, Ld. Senior DR for the Revenue opposed the prayer of assessee for condonation of delay and stated that assessee has failed to explain sufficient cause, therefore, delay should not be condoned.

6. I have heard both the parties on this preliminary issue. I find that the order of Ld.CIT(A) was served on the previous tax consultant, who has received the order of Ld.CIT(A) but could not inform the assessee, on time, therefore, delay of 216 days occurred in filing the appeal before the Tribunal. Because of the mistake on the part of previous tax consultant, the assessee should not be penalized. Therefore, I note that delay has mainly caused due to mistake of previous tax consultant who has not informed the assessee about passing of *ex-parte* order by Ld.CIT(A). Subsequently, the assessee came to know, when he accessed the ITBA portal and then after, the assessee took appropriate steps, to file the appeal before the Tribunal. As I have noted earlier, that because of the mistake on the part of previous tax consultant, the assessee should not be penalized. Considering these facts, I am of the considered view that assessee has explained sufficient cause and therefore delay needs to be condoned.

7. 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.....”

8. When I weigh these two aspects then the side of justice becomes heavier and casts a duty on me 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.

9. 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 Assessing Officer and the Assessing Officer made addition of Rs.11,01,500/- u/s 144 of the Act and passed assessment order on 24.12.2019. The delay for 872 days has occurred in filing the appeal before Ld. CIT(A) because notices were issued by the Assessing Officer who was not jurisdictional Assessing Officer, and the Chartered Accountant (CA) who was responsible to handle the appeal of the assessee was not aware about the jurisdictional Assessing Officer of the assessee, since the notices were issued by the Assessing Officer who was not having jurisdiction on the assessee. Therefore, Chartered Accountant of the assessee believed that no any notices were issued by the Assessing Officer . The Assessing Officer has passed the ex-parte order.



When the demand notice was issued by the Assessing Officer then assessee came know about the ex-parte order passed by the Assessing Officer.

10. Aggrieved by the order of Assessing Officer, assessee carried the matter in appeal before Ld. CIT(A). Before Ld.CIT(A) the appeal filed on 06.07.2022 and in Form-35 the e-mail was mentioned as piyushpadasala268@gmail.com and stated that with reference to the above assessee the tax consultant was lazy who did not file the appeal on time before Ld.CIT(A). When he got demand notice then assessee again gave appeal paper to his new tax consultant who is now handling the case of assessee. The appeal was filed beyond the period prescribed under the Act of the Act before Ld. CIT(A) because of change in tax consultant and because of mistake committed by old tax consultant. On merit, the ld CIT(A) also held that the assessee is not interested in pursuing his appeal. Resultantly, the addition made by Assessing Officer was confirmed and unadmitted the appeal of assessee by Ld. CIT(A) as there was no sufficient cause for condonation of delay.

11. Further aggrieved by the order of Ld. CIT(A) assessee filed present appeal before the Tribunal. The Ld. Counsel for the assessee stated that assessee is an individual filed his return of income on 27.03.2018 declaring total income of Rs.3,55,130/-. Subsequently case was selected for limited scrutiny as cash was deposited during demonetization period. Thereafter notices of hearing issued in ITBA portal where assessee submitted e-mail id of his tax consultant, however, tax consultant did not inform the assessee nor complied with such notices. The Ld. 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. The Ld. Counsel also submitted that the CA who was responsible to attend hearing before the Assessing Officer was died, and to substantiate this fact the Ld. Counsel for the assessee submitted before



me the death certificate of the CA. Therefore, the Ld. Counsel stated that due to death of the CA who was responsible to handle the taxation matter of the assessee the delay in filing the appeal before Ld.CIT(A) has occurred. The other reason was notices issued by the non-jurisdictional Assessing Officer, therefore, the Advocate/ CA did not take care, and as a result, the delay for 872 days has arisen in filing the appeal before the Ld. CIT(A), which may be condoned in the interest of justice, and matter may be remitted back to the file of the Assessing Officer for fresh adjudication as the assessee now wants to submit further additional evidence before Assessing Officer.

12. On the other hand, the Ld. Sr. DR for the revenue submitted that it is extra ordinary delay and the assessee did not take care in filling the appeal in time, therefore, delay in filing the appeal before the Ld. CIT(A) should not be condoned.

13. I have heard both the parties and perused the material available on record. I noted that the assessee has explained the sufficient cause, in respect of the delay for 872 days by filing the death certificate of the Advocate/ CA of the assessee who died. The second cause of the delay was, notices were issued by the Assessing Officer who was not jurisdictional Assessing Officer, therefore, the Advocate/ CA of the assessee did not take care to attend the proceedings. Hence, I find that the assessee has explained sufficient cause and submitted death certificate of the CA which is on record, therefore, the delay should be condoned in the interest of justice.

14. 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



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“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.....”

15. 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. Hence, the delay in filing the appeal before Ld.CIT(A) is condoned.

16. So far as merits of the case is concerned, I find that Ld.CIT(A) has passed the order *ex parte* order stating that assessee's appeal is not maintainable. Keeping in view the peculiar facts of the case, I find from perusal of the order of the ld. CIT(A) that the order of ld. CIT(A) is not as per mandate of Section 250(6) of the Act. 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, without delving much deeper into the merits of the case, in the interests of justice, I restore the matter back to the file of Assessing Officer for *de novo* adjudication after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, I set aside the order of Ld. CIT(A) and deem it fit and proper to remit the matter back to the file of the Assessing Officer. The assessee is also directed



to be more vigilant in future and not to take any adjournment without any valid reason. The assessee is also directed to submit all the documents, evidences and replies as soon as possible without any further delay. In the result, grounds of appeal raised by the assessee are allowed for statistical purposes only.

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

Order pronounced in the open court on 23/05/2025.

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

राजकोट/Rajkot

दिनांक/ Date: 23/05/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ 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 आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय आधिकरण, राजकोट