

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.1294/SRT/2024
Assessment Year: (2013-14)
(Hybrid hearing)

Prafulbhai Jagubhai Patel, 2/7, Dastan, Palsana, Surat – 394 310	Vs.	ITO, Ward - 1, Bardoli
स्थायी लेखासं./जी आइ आरसं./PAN/GIR No: BVOPP8701K		
(Appellant)		(Respondent)

Appellant by	Shri Shrijignesh Parikh, AR with Shri Marufkhan Pathan, AR
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	12/03/2025
Date of Pronouncement	20/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed u/s 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 20.11.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2013-14.

2. Grounds of appeal raised by the assessee are as under:

"1. The National Faceless Appeal Centre has erred in law and in facts by passing the impugned order ex parte without giving adequate and reasonable opportunity of being heard to the appellant.

2. The National Faceless Appeal Centre has erred in law and in facts in confirming the assessment order under section 147 read with section 144 of the Income Tax Act, 1961.

3. *The National Faceless Appeal Centre has erred law and in facts in confirming the addition of Rs.83,42,688/- under section 69A of the Income Tax Act, 1961.*

4. *The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal."*

3. The facts of the case in brief are that the assessee had not filed his return of income for the AY.2013-14. As per the information available, the assessee had transferred Rs.75,47,000/- on 30.08.2012 from his bank account to Shri Jayantibhai Jagabhai Patel. Further, Smt. Moheeni J. Patel had purchased 2 insurance policies of Rs.18,00,000/- and Rs.8,00,000/- from India First Lie Insurance Co. Ltd. during the subject assessment year. The premium of policy No.10333764 of Rs.18,00,000/- was paid from Bank of Baroda, which belongs to Shri Jayantibhai J. Patel. On perusal of bank statement of A/c No.17150100002654, the Assessing Officer (in short, 'AO') observed that credits of Rs.75,47,000/-, which were not disclosed since the assessee had not filed his return of income for AY.2013-14. Accordingly, AO reopened the case u/s 147 of the Act after obtaining prior approval from the competent authority by issuing show cause notice u/s 148A(d) of the Act on 26.05.2022. Various notices were issued by AO, but only part compliance was made in response to the notices. The assessee filed his written submission on 22.03.2023 wherein he had challenged the validity of reopening u/s 148 of the Act. The AO did not accept the contention of the assessee because he did not file return of income in response of notice u/s 148 of the Act. The AO invoked the provisions of section 144 of the Act and

held that the source of the cash/credit deposits of Rs.83,42,688/- is unexplained money u/s 69A of the Act. The AO passed the assessment order u/s 147 r.w.s. 144 of the Act by making addition of Rs.83,42,688/- u/s 69A of the Act and the same added to the total income of the assessee. The total income was determined at Rs.83,42,688/- against returned income of Rs. Nil.

4. Aggrieved by the addition made by AO, assessee filed appeal before the CIT(A). The CIT(A) issued 4 notices fixing the hearing on 31.07.2024, 04.09.2024, 27.09.2024 and 22.10.2024. There was no compliance to any of the notices issued by CIT(A). Hence, the CIT(A) proceeded to decide the appeal based on the materials available on record. The assessment order and demand notice was served upon appellant on 20.05.2023. Thereafter, appeal should have been filed within 30 days from the date of service of order by 19.06.2023 but appeal was filed on 20.08.2023. Thus, there was a delay of 62 days. During the appellate proceedings, the appellant was called upon to submit the reasons of delay. Neither any submission nor any reason for the delay has been submitted by the appellant. The CIT(A) held that in condoning the delay, the appellate authority must be satisfied that there has been due diligence on the part of the appellant and it was not guilty of negligence. The CIT(A) relied upon the decisions in cases of B. R. Ramalingam vs. R. B. Bhavaneshwari, (2009) (SC2) GJX 106 (SC), CIT vs. Ram Mohan Kabra, (2002) 257 ITR 773 (P&H) and Surinder Kumar Boveja vs.

CWT, (2006) 287 ITR 52 (Del) and held that the appellant had not made a case for having “sufficient cause” for delay in filing appeal. The appeal filed by the appellant was held to be invalid and non-maintainable, being out of time. He, therefore, did not admit the appeal and dismissed the same.

5. Aggrieved by the order of CIT(A) the assessee has filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that in Form No. 35, at column No.15, the assessee had stated that *“The detailed justification for delay in filing the appeal will be submitted at the time of filing of appeal.”* The Id. AR of the assessee submitted another opportunity may be given to the assessee to plead his case before AO. It was further submitted that the delay was neither deliberate nor intentional and it was due to circumstances beyond the control of the assessee. Hence, the Ld. AR requested to condone the delay and set aside the matter to the AO to make the assessment on merit in accordance with law.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of lower authorities. He stated that the Bench may decide the matter it thinks fit.

7. We have heard both the parties and perused the materials available on record. The CIT(A) has refused to condone the delay and dismissed the appeal without discussing the appeal on merit. As per sub-section (2) of section 249 of the Act, the appeal shall be presented within 30 days from

the date of service of the notice of demand relating to the assessment or penalty. However, sub-section (3) of section 249 of the Act permits the CIT(A) to admit an appeal after expiration of the said period if he is satisfied that the appellant had 'sufficient cause' for not presenting the appeal within prescribed time limit. The notion of condonation of delay encompasses the discretionary power of an appellate authority to extend the prescribed time limit for filing an appeal or an application. It pertains to the mechanism by which the said appellate authority may grant clemency for delay in submitting an appeal. The discretion to condone the delay has to be exercised judicially based upon the facts and circumstances of the case. It has been held in a number of cases that the authority exercising such power should be judicious and be not guided by technical rules alone. In the present case, we find that the assessee was non-compliant during both the assessment and appellate proceedings. Considering the submission of the assessee and that the delay was rather small of 62 days, we are of the considered view that there was 'sufficient cause' for not presenting the appeal to CIT(A) within the prescribed period of 30 days. We, therefore, set aside the order of CIT(A) and remit the issue to CIT(A) for fresh adjudication after giving reasonable and sufficient opportunity of being heard to the assessee subject to payment of the cost of Rs.15,000/- (Rupees fifteen thousand only) by the assessee to the credit of the **"Gujarat State Legal Services Authority"** within two weeks from receipt of this order. Subject to

payment of above cost, we set aside the order of CIT(A) and remit the matter back to the file of CIT(A) with a direction to pass fresh order in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all the details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons. The ground is allowed for statistical purpose.

8. Since we have set aside the order of CIT(A) for fresh adjudication, the other grounds became academic in nature and do not require adjudication.

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

Order is pronounced on 20/05/2025 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat
दिनांक/ Date: 20/05/2025
SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat