

आयकरअपीलीयअधिकरण, राजकोटन्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 224/RJT/2025

निर्धारणवर्ष / Assessment Year: (2011-12)

(Hybrid Hearing)

VipulbhaiYogeshbhai Teli Prop. Tha. Yogeshkumar Harjivandas, Station Road, Chalala-365630	Vs.	Income-tax officer, Ward- 3(1)(4), Ganga Bhuvan, Keriya Road, Amreli-365560
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACHPT4257B		
(Assessee)		(Respondent)

Assessee by : Shri Pragnesh Jagasheth, Ld. AR

Respondent by : Shri Dhiraj Kumar Gupta, Ld. Sr.DR

Date of Hearing :14 /05 /225

Date of Pronouncement :09/06/2025

आदेश / O R D E R

PerDr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the assessee, pertaining to Assessment Year 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), vide order dated 25/09/2024, which in turn arises out of an order assessment order passed by the Assessing Officer, dated 12/12/2018.

2. When the matter was called for hearing, the learned Counsel for the assessee, at the outset submitted that the appeal has been filed by the assessee, belatedly. The learned



Counsel adverted my attention to the affidavit filed in this regard citing reasons for condonation of delay and urged for a benign view and sought condonation of delay of 134 days in filing the appeal before the Tribunal. The learned Counsel, explained the reasons for delay stating that the hearing notices u/s.250 of the Act, were issued dated 15.02.2021 and 09.04.2021, on wrong email ID, vyt@kmv.33mail.com. Hence, assessee could not comply the hearing notices. When, assessee visited the office of his 'AR' and then AR checked the E-filing portal, the assessee found that the CIT(A) order was passed ex-parte, dated 25.09.2024. The assessee, then downloaded the order, and appointed new AR for the further appeal, and filed the Appeal on 07.04.2025 before the Hon'ble ITAT, Rajkot against order of the Id.CIT(A). As a result, the appeal was delayed by 134 days. Learned Counsel for the assessee, prayed the Bench that in the interest of justice, the delay may be condoned. On the other hand, learned DR for the revenue, opposed the prayer of the assessee, for condonation of delay and stated that delay should not be condoned.

3. I have heard both the parties on this preliminary issue. There is a statutory limit prescribed for filing of appeal in the Act. The invocation of the power to condone any delay, major or minor, in observing such time limit is possible only on the satisfaction of the authorities, regarding the assessee having been unable to file the appeal in time due to sufficient cause. The assessee cannot be entitled to automatic admission of appeal filed after the time limit. In the instant case, the assessee has explained the sufficient cause for the



delay. A perusal of the affidavit gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned.

4. On merit, the solitary grievance of the assessee in this appeal is that learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.15,00,000/-, cash deposit in bank account.

5. Succinctly, the factual panorama of the case is that assessee before me is an Individual. In the assessee's case, the Department is in possession of information that the assessee has made cash deposits of Rs.15,00,000/- in the saving bank account. However, on verification of assessee's records, it was noticed by the assessing officer that the assessee did not file the return of income for the assessment year (A Y) 2011-12 and thereby the sources of cash deposits made in the saving bank remained unexplained. Therefore, after recording reasons, the assessee's case was re-opened after obtaining prior approval of the Jt. CIT, Range-3(1), Rajkot vide the reasons recorded for initiating proceedings u/s. 148 of the Act, dated 21.03.2018. Thereafter, the notice u/s 148 of the Act, was issued on 24/03/2018 by the assessing officer and served upon the assessee. Due to non-submission of the details by the assessee for cash deposit of Rs. 15,00,000/- in State Bank of India, the assessing officer treated the same as unexplained cash deposit u/s. 68 of the Act and accordingly added to the income of the assessee for the A.Y. 2011-12.



6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the learned CIT(A), who has just reiterated the facts of the assessee and confirmed the action of the assessing officer. Further aggrieved, the assessee knocked the door of the Tribunal, and thus, is in further appeal before me.

7. Shri Pragnesh Jagasheth, Learned Counsel for the assessee, begins by pointing out that assessee under consideration, did not suppose to file the return of income for the assessment year(A.Y.) 2011-12, as his income was below the maximum amount, which is not chargeable to tax. However, the cash has been deposited by the assessee, in his bank account out of his own proprietary business/ family owned retail business of fruits and flowers. That is, along with his family members (wife, father, mother) do the business of fruits and flowers and in such kind of business, the hundred percent transactions are in the cash only. That is, purchase and sale of fruits and flowers are in cash only. The Cash received on account of sale of fruits and flowers have been deposited in the bank account, which is nothing but turnover of the assessee's family retail business. In this situation, the entire cash deposit in the bank account should not be treated as net profit of the assessee. Therefore, a profit element may be taxed in the hands of the assessee.

8. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which I have already noted in my earlier para and is not being repeated for the sake of brevity.



9. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. I note that it is an undisputed fact that assessee, along with other his family members engaged in the business of fruits and flowers where purchase and sale, both are in cash, and such sales, in cash, has been deposited in the bank account. Therefore, it is nothing but turnover (sales) of the assessee. The entire turnover (sales) have been taxed by the assessing officer, which is unfair, therefore, I am of the view that only profit element is to be taxed in the hands of the assessee.

10. I note that pattern of assessment under the Income-tax Act is given by section 29 which states that the income from profits and gains of business shall be computed in accordance with the provisions contained in sections 30 to 43D of the Act. Section 40 provides for certain disallowances in certain cases notwithstanding that those amounts are allowed generally under other sections. The computation under section 29 is to be made under section 145 on the basis of the books regularly maintained by the assessee. If those books are not correct or complete, the Income-tax Officer may reject those books and estimate the income to the best of his judgment. I note that assessee under consideration, is small assessee and does not maintain books of accounts, therefore, the assessee, comes, under the provisions of section 44AD of the Act/ 44AF of the Income tax Act, therefore profit is to be estimated taking into account of retail business of the assessee. The estimation of income is



based on facts and will vary from year to year depending on the business conditions. No doubt, estimate of the profit can be resorted to in these types of cases. Further, I find that the amount deposited out of family owned business in the bank account cannot be treated income of the assessee and only the profit element is to be taxed in the hands of the assessee. I find that in such type of business, 5% net profit (after deducting direct and indirect expenses from sale) is appropriate. Therefore, I am of the view that to meet the end of justice, the addition at the rate of @ 5% of the total turnover, which is deposited in the bank account, may be a reasonable addition, in the hands of the assessee. For that I rely on the judgment of the ITAT Surat Bench in the case of Mukeshbhai Kishorbhai Lakhani vs. ITO in ITA No. 20/Srt/2023 vide order dated 04.09.2023, where it was held as follows:

“11. I note that the total credit in the bank statement, after eliminating contra-entries, comes to Rs.23,24,831/-. Therefore, I am of the view that to meet the end of justice an addition at the rate of 5% on total credit in the bank statement of Rs.23,24,831/- may be a reasonable addition in the hands of the assessee. For this, I rely on the judgment of Co-ordinate Bench of ITAT, Surat in the case of Smt. Krushangi Keyur Bhagat vs ITO, in ITA No.2706/Ahd/2015 for AY.2008-09, order dated 26.09.2018, wherein the Tribunal sustained the addition at the rate of 5% of total deposits. The findings of the Co-ordinate Bench of ITAT, are reproduced below:

“7. We have heard the rival submissions and perused the relevant material on record. We find that the assessee is a salaried person and deriving salary from Kalyani Multilink Pvt. Ltd. The deposits appearing in the bank account under consideration has not been disclosed. However, the pattern of deposits in bank account would show that there are some transaction in which cheque has been issued. There are debit entries in this bank account. The assessee has claimed that this bank account pertained to her business in trading. Ongoing through bank statement and facts of the case we observe that there are frequent transaction of cash as well as cheques. On careful consideration of facts, we are of the view that entire deposits in bank account cannot be considered for addition. Since the bank account is reflecting deposits as well as withdrawals, hence, there is every likely that bank account has been used for unrecorded business transactions as claimed by the assessee. Therefore, it would be in the



interest of justice that only profit eliminate @ 5% is considered for tax of total deposits of Rs. 18,32,079. Therefore, the assessing officer is directed to consider net profit @ 5% of total deposits of Rs.18,32,079 which worked out to Rs. 91,600. Accordingly this addition of Rs.14,76,614 is restricted to Rs. 91,600. This ground is therefore, partly allowed."

12. Based on these facts and circumstances, as narrated above, I direct the Assessing Officer to make the addition in the hands of the assessee to the tune of Rs.1,16,242/- (5% of Rs.23,24,831/-). Hence the assessee's appeal is allowed partly.

11. Therefore, respectfully following the binding judgments of the Hon'ble ITAT Surat Bench, on the identical facts, I direct the Assessing Officer to sustain the addition @5% of the total amount deposited in the bank account, that is, (5% of Rs. 15,00,000/-) which comes to Rs. 75,000/- . Therefore, the assessing officer is directed to make the addition in the hands of the assessee, to the tune of Rs. 75,000/-.

12. Before parting, I make it clear that the amount deposited in the bank account pertains to assessee's family business of fruit and flowers, and it is a turnover (sales) of the assessee, therefore, I direct the Assessing Officer to tax the same, by applying normal rate of income tax (not under Section 115BBE of the Act).

13. In the result, assessee's appeal is partly allowed, in above terms.

Order pronounced in the open court on 09/06 /2025.

Sd/-

**(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 09/06/2025



Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot