

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

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

आयकर अपील सं./ITA No.119/RJT/2025

(निर्धारण वर्ष/Assessment Year: (2016-17))

J.K. Securities & Consultancy 301, Sagar Arcade, Gondal Road, Rajkot-360 002	बनाम /Vs.	Income Tax Officer, Ward- 1(2)(1), Rajkot, New Aaykar Bhawan, Race Course Ring Road, Rajkot-360 001
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: AADFJ 6816 G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Appellant by : Shri Samar Bhuptani, Ld.A.R.
राजस्व की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld.Sr. D.R.

सुनवाई की तारीख/ **Date of Hearing** : 30/07/2025

घोषणा की तारीख/**Date of Pronouncement** : 30/07/2025

आदेश / O R D E R

PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to Assessment Order (AY) 2016-17, is directed against the order under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) passed by the National Faceless Appeal Centre (NFAC), Delhi/Learned Commissioner of Income Tax(Appeals) (in short “Ld.CIT(A)”, dated 13.10.2023, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Act dated 18.12.2018.

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

“1. Ld. CIT(A) erred in law as well as on facts in passing the ex-parte appellate order u/s 250 of the Income Tax Act, 1961 which is bad in law and without appropriate jurisdiction.

2. Ld. CIT(A) erred in law as well as on facts in presuming that the appellant is not interested in prosecuting the appeal.

3. Ld. CIT(A) erred in law as well as on facts in not adjudicating the grounds of appeal raised by the appellant in its appeal memo and thereby dismissing the appeal for want of prosecuting and without passing any comment on merit.

4. Ld. CIT(A) erred in law as well as on facts in not providing reasonable opportunity of being heard to the appellant.

5. Ld. AO erred in law as well as on facts in making addition of Rs.50,42,769/- on account of mis-match in Form No.26AS vis-à-vis audit report. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.

6. Ld. AO erred in law as well as on facts in not appreciating the fact that the entire receipt of the appellant is from Government Colleges and all the receipts are made through account payee cheque only, there cannot be any scope for manipulation of the income. Ld.CIT(A) erred in law as well as on facts in not adjudicating the same.

7. Ld. AO erred in law as well as on facts in making high-pitch assessment, which is far from reality and logic. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.

8. Ld. AO erred in law as well as on facts in making addition to the total income without rejecting books of account, Ld. Cit(A) erred in law as well as on facts in not adjudicating the same.

9. Ld. AO erred in law as well as on facts in not restricting the addition upto profit element embedded in the receipt Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.”

3. The appeal filed by the assessee is barred by limitation by 411 days. The assessee has filed an affidavit giving reasons for delay in filing the appeal before the Tribunal. The learned Counsel explained the delay, stating that email id, given to the Department for sending notices, was belonging to Tax consultant. The Tax consultant did not inform the assessee about the notices issued by the learned CIT(A) and about the passing of the order by the learned CIT(A). When the assessee approached another tax consultant to know about the scheme of Vivahd Se Vishwas, then that Counsel (another Tax Consultant) obtained the password of the web -portal from the old tax consultant and verify the e-proceeding tab, and on verification of the same, it was found that the order has been passed *ex- party* by the learned CIT(A). Thereafter, the assessee,

took immediate step to file the appeal before this Tribunal. Hence, in this process, because of the mistake of the tax consultant, such delay has occurred, which may be condoned, in the interest of justice.

4. On the other hand, the Learned Senior DR for the Revenue submitted that mistake committed by the Tax consultant is not a sufficient cause to condone the delay. Hence, appeal of the assessee may be dismissed.

5. We have heard both the parties on this preliminary issue. It is submitted that as per the new system of appeal proceedings, notices are served to assessee, however, the assessee did not receive notices of hearing from Ld. CIT(A); and as a result, the assessee could not participate in appellate proceedings; and moreover, the assessee was not aware about passing the appellate order, as the Tax Consultant of the assessee, did not inform to the assessee, about passing the appellate order. When the new Tax consultant was appointed, then only the assessee came to know about passing the order by ld. CIT(A). No doubt, the appeal should have been filed by the assessee, on time. It should be noted that the legislature has provided time limits for certain obligations under the Act and these time limits have to be observed. It is compliance requirements imposed by law in the interest of proper regulation of the Act. We are 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 & provisions are laid down to benefit both sides of litigation. Be that as it may, we 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) observes

“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.”

6. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. In the assessee’s case under consideration, the delay happened because of non- receipt of appellate order, as the old Tax Consultant of the assessee committed the mistake. We note that the assessee should not be penalised, because of the mistake committed by the old Tax Consultant, for that reliance is also placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

“3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessees immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assesseees cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing.

7. On professional advice, we note that the Courts and Tribunals have consistently held that in the matter of condonation of delay, pragmatic and liberal approach should be taken. We note that appeal should not be rejected on technical ground of delay and the appeal should be ordinarily decided on merits. The Hon'ble Gujarat High Court has also considered this aspect of condonation of delay in case of Gujarat State Fertilizers & Chemicals Ltd. (283 ITR 149) and held that...

“The position in law is well settled that an assessee should be granted due relief where it is due without standing on technicalities and the

revenue must bear the established legal position in mind while dealing with applications seeking condonation of delay. It is necessary that liberal approach is adopted in such a matter so as to ensure that substantive rights are not defeated on the basis of technicalities or limitation. "

8. Therefore, ld. Counsel adverted our attention to the reasons for condonation of delay and urged for a benign view and sought condonation of delay of 411 days in filing the appeal before the Tribunal. A perusal of the reasons and sufficient cause explained by the ld. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. We, therefore, condone the delay of 411 days and admit the appeal for hearing.

9. On merit, At the outset, Ld. Counsel for the assessee submitted that during the appellate proceedings, assessee had not appeared before Ld.CIT(A) and could not furnish relevant documents, as notices, were not served on the assessee, and tax consultant of the assessee did not inform the assessee. The Ld. Counsel for the assessee submitted that now the assessee is ready with the documents and wants to furnish the details and documents before lower authorities. The Ld. Counsel, therefore, prayed before the Bench that one more opportunity should be given to the assessee to plead his case before Ld.CIT(A).

10. The ld. Sr-DR of the Revenue, did not raise objection, if the matter is remitted back to the file of the ld.CIT(A).

11. We have heard both the parties and gone through materials available on record. We note that ld. 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. The Ld. Counsel of the assessee requested the Bench to set aside the order of CIT(A) and

requested the Bench that matter may be remitted back to the file of the Ld.CIT(A) for fresh adjudication and ld Counsel undertook the responsibility that all the details would be filed before Ld.CIT(A), if another opportunity is granted to the appellant. The Ld. Sr-DR has also no objection if the matter is restored to the file of Ld.CIT(A). In view of the above facts, we deem it proper to set aside the order of CIT(A) and restore the matter back to the file of Ld.CIT(A) for fresh adjudication after granting adequate and fair opportunity of being heard to the assessee. It is needless to say that assessee will be at liberty to adduce any evidences, as deemed relevant before the Ld.CIT(A) at the time of proceedings, in consequence to this order and the Ld.CIT(A) shall allow the assessee adequate opportunity of being heard and to make relevant submissions, and then pass a speaking order, which is fair and judicious. Accordingly, appeal of assessee is allowed for statistical purposes.

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

Order is pronounced on 30/07/2025 in the Open Court.

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

राजकोट /Rajkot

दिनांक/ Date: 30/07/2025

DKP Outsourcing Sr.P.S

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

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

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट