

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.392/RJT/2025

(निर्धारण वर्ष/Assessment Year: (2018-19)

M/s Shiven Ceramic LLP, 604/P5, 642/P1, Village Ghnutu, Lakhdhirpur Nr. Royal Touch Vitrified, Morbi-360 004	बनाम /Vs.	Income Tax Officer National e-Assessment Centre, Delhi
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: ADIFS 8442 F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by : Shri Darshit Ranpara, Ld. A.R.
राजस्व की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. D.R.

सुनवाई की तारीख/ **Date of Hearing** : 06/08/2025

घोषणा की तारीख/**Date of Pronouncement** : 20/08/2025

आदेश / ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2018-19, 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/Commissioner of Income Tax(Appeal) (in short “Ld. CIT(A)”, dated 12.06.2024, which in turn arises out of an assessment order passed by the National e-Assessment Centre, Delhi/Assessing Officer u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act, dated 15.04.2021.

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

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The ld Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”] erred on facts as also in law in dismissing the appeal ex-parte.

3. The ld. CIT(A) erred on facts as also in law in confirming addition made by AO of Rs.4,00,000/- being unsecured loan received from Hitesh Gandadal on the alleged ground that the appellant failed to prove the genuineness of transaction and creditworthiness of lender. The addition confirmed is unjustified an uncalled for, which deserves to be deleted, may kindly be deleted.

4. The ld. CIT(A) erred on facts as also in law in confirming addition made by AO of Rs.8,50,000/- being total capital introduced by 8 partners on the alleged ground that the appellant failed to prove genuineness of transaction and creditworthiness of partners along with necessary supporting. The addition confirmed is unjustified an uncalled for, which deserves to be deleted, may kindly be deleted.

5. Your honour’s appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

3. The appeal filed by the assessee is barred by limitation by 282 days in terms of provisions of section 253(3) and 253(5) of the Act. The assessee has filed an affidavit giving reasons for delay in filing the appeal before the Tribunal. The learned Counsel for the assessee, explained the reasons for delay, stating that in an appeal filed, before the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi, who has, vide order dated 12.06.2024, dismissed the appeal ex-parte, without allowing proper opportunity of being heard. On receipt of the order of ld. CIT(A), a copy of the same was handed over to the accountant to consult the chartered accountant for further course of action and filing appeal. However, the accountant has filed the order in the office file inadvertently. Therefore, the appeal against the appellate order could not be filed in time. Recently, it has come to know that appeal remained to be filed due to mistake of the accountant. Under the above peculiar facts and circumstances of the appellant’s case the appeal could not be filed before

the Hon'ble ITAT within prescribed time limit of 60 days. Delay of 282 days in filing the appeal is not intentional but because of the facts and circumstances mentioned above. Therefore, Id. Counsel for the assessee prays to Bench that the delay in filing the appeal be condoned.

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 in prescribed time. Therefore, cost of Rs.2,000/- should be imposed on the assessee on account of negligence of the assessee. 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. We have heard both the parties on the preliminary issue. We find that because of the mistake on the part of Advocate /Accountant of the assessee, the assessee should not be penalized. The Ld. Counsel for the assessee, submitted that on receipt of above order of CIT(A), which was handed over to accountant, with a direction to consult with Chartered Accountant/Advocate for further course of action. The accountant inadvertently kept in the office file. In this process, the delay of 282 days has occurred. The Ld. Counsel for the assessee, also invited our attention to the affidavit filed by Shri Pradyuman B. Parejiya, accountant, of the assessee. 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 and 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) 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.....”

6. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We 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, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned and to decide the appeal of assessee on merits in accordance with law. Accordingly, we condone the delay and admit the appeal of the assessee to adjudicate on merit.

7. On merit, Ld. Counsel for the assessee submitted that during appellate proceedings, the assessee could not appear and could not submit the details and documents because of the circumstances beyond its control. The Ld. Counsel further 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). The Ld. Counsel of the assessee submits that the Ld. CIT(A) passed the order u/s 250 of the Act on 12.06.2024 without hearing the assessee which is in violation of the principles of natural justice. The assessee could not represent its case before Ld. CIT(A) and the order being an *ex parte*, stood vitiated on account of violation of principles of natural justice. An adequate opportunity of hearing was not given to the assessee; therefore, Ld. Counsel contended that one more opportunity

should be given to the assessee to plead his case before the CIT(A). The ld. Counsel undertakes to be vigilant and furnish explanation and details expeditiously.

8. On the other hand, Learned Senior Departmental Representative (Ld. Sr. DR) for the Revenue supported the order of lower authorities. The ld. DR stated that cost of Rs.2000/- may be imposed on the assessee, as the assessee has been negligent in pursuing the appeal before CIT(A).

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. We find that Ld. CIT(A) has passed *ex parte* order. Evidently, the assessee did not comply with the notices issued by Ld. CIT(A). The addition on account of cash credit of Rs.8,50,000/-, u/s 68 of the Act, has been made by AO, which was confirmed by CIT(A). The Ld. Counsel for the assessee submitted that non-compliance by assessee was not deliberate but due to unavoidable circumstances. The assessee has submitted various details which were not submitted before AO or Ld. CIT(A). The Rule-29 permits ITAT to admit additional evidence for any substantial cause. The Ld. Counsel for the assessee submitted that non-compliance was due to unavoidable circumstances. Hence, the additional evidences may be admitted. After considering the contentions of both parties, we find that the Ld. CIT(A) has not passed an order as per the mandate of section 250(6) of the Act and dismissed the appeal of assessee only on the ground of non-compliance. The order passed by the Ld. CIT(A) is clearly violative of the express provisions of section 250(6) of the Act, which provides that the appellate orders of the Ld. CIT(A) are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decisions. The underlying rationale of the provision is that such orders are

subject to further appeal to the Appellate Tribunal. Speaking order would obviously enable a party to know precise points decided in his favour or against him. Considering the facts and circumstances of the case and the fact that the assessment order was confirmed by Ld. CIT(A) in *ex parte* order, we are of the considered view that the assessee deserves one more opportunity to contest his case on merit. In the interest of justice, we set aside the order of Ld. 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 assessee. However, on account of non-compliance attitude of the assessee, a cost of Rs.2,000/- (Rupees two thousand only) is imposed on the assessee, which shall be deposited with the Prime Minister Relief Fund, within 15 days from the date of receipt of this order. The assessee is directed to be vigilant and to furnish all details and explanation as needed by Ld. CIT(A) and should not seek adjournment without valid reason. With this direction, the grounds of appeal raised by the assessee are treated as allowed for statistical purposes.

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

Order is pronounced on 20/08/2025 in the Open Court.

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

राजकोट /Rajkot

दिनांक/ Date: 20/08/2025

DKP Outsourcing Sr.P.S

Sd/-
(DR. ARJUN LAL SAINI)
लेखा सदस्य/**Accountant Member**

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 अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट