

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1285/SRT/2024

Assessment Year: (2011-12)

(Hybrid hearing)

Sunita Sandeep Desai, 212, Shrushti Complex, Opp – Convent High School, Gandevi Road Lunsikui, Navsari - 396445	Vs.	ITO, Ward – 5, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AFVPD1309P		
(Appellant)		(Respondent)

Appellant by	Shri Chetan Agrawal, AR
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	16/07/2025
Date of Pronouncement	22/08/2025

**आदेश / ORDER**

**PER BIJAYANANDA PRUSETH, AM:**

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 26.11.2024 by the Addl./JCIT(A), Udaipur [in short, 'the CIT(A)'] for the assessment year (AY) 2011-12.

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

*"1. Learned CIT(A) erred in law as well as on facts in dismissing appeal on ground of limitation without condoning delay of 173 days in filling appeal.*

*2. Learned CIT(A) erred in law as well as on facts in dismissing appeal ex-parte.*

*3. Learned CIT(A) erred in law as well as on facts in upholding additions made by Ld. AO in ex-parte assessment order.*

*4. Learned CIT(A) erred in law as well as on facts in upholding additions without considering submissions and evidence filed in the course of proceedings."*

3. The facts of the case in brief are that the assessee had not filed her return of income. There was AIR information that the assessee had deposited cash of Rs.11,97,900/- in her savings bank account maintained with Canara Bank, Navsari. The Assessing Officer (in short, 'AO') issued a letter dated 20.02.2017 and asked assessee to clarify whether any return was filed by her for the year. The assessee has not responded to the said letter. The case was re-opened u/s 147 of the Act after recording the reasons by issuing notice u/s 148 of the Act on 23.03.2018. Various notices and show cause notice were issued to the assessee, but the assessee failed to comply with the notices to substantiate her claim. Due to repeated non-compliance, the AO issued final show cause notice on 22.10.2018 through e-mail, which is at pages 2 to 4 of the assessment order. The assessee had given more than sufficient opportunity to explain the same. Due to non-compliance of assessee, the entire deposit of Rs.11,97,000/- was treated as unexplained cash deposits. Total income was determined at Rs.11,97,900/-.

4. Aggrieved by the order of AO, the assessee filed this appeal before the CIT(A). On perusal of Form 35, the CIT(A) observed that assessment order was passed on 12.11.2018 and therefore, appeal should have been filed within 30 days, i.e., 12.12.2018. However, the appellant filed appeal on 11.05.2019, i.e., after a delay of 5 months. He observed that there was a substantial delay in the filing of appeal for which no sufficient reason was given by the appellant. The appellant had stated that the order was not served properly. However, it was

seen that in Form 35, the appellant had stated the order was passed on 12.11.2018 and served on 19.11.2018 whereas the appeal was filed on 11.05.2019. Therefore, once the order was served on 19.11.2018 as admitted by the appellant, the appeal should have been filed on 19.12.2018. He held that a distinction must be made between a case where the delay is inordinate and where the delay was of few days only. He relied on the decision of Hon'ble Supreme Court in case of Vedabhai Alias Vaijayantabai Baburao Patil vs. Shantaram Baburao Patil, (2002) 122 Taxman 114 (SC) and held that the appellant had no 'sufficient cause' in terms of section 249(3) of the Act for not presenting the appeal within the prescribed period. Hence, conditions laid down u/s 249(2) of the Act are not fulfilled and accordingly, he dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the CIT(A) dismissed the appeal on ground of limitation without condoning delay of 173 days in filing appeal. He also submitted that the AO and CIT(A) have passed an ex parte order. He submitted that the reasons for the delay was mentioned at para 15 in Form 35. He submitted that the assessment order was not properly served on the correct address. He submitted that in the column no.15, it was clearly mentioned that there was delay in filing appeal in service of notice at wrong address. However, the same was Bonafide and an inadvertent mistake. Moreover, the order was not as per mandate of section

250(6) of the Act. Therefore, he requested that another opportunity may be given to the assessee in the interest of justice.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue submitted that the Bench may decide the matter as it thinks fit.

7. We have heard both the parties and perused the materials available on record. The CIT(A) did not condone the delay by stating that no reason whatsoever was given by the appellant for delay in filing appeal. Since the appeal was dismissed at the threshold, no findings or decision was given on the merits of the case. The Id. AR submitted that the CIT(A) has not considered the reasons given by the assessee for delay in filing the appeal. He submitted that in Form No.35, the assessee, at column no.15, has duly mentioned that the assessment order was served to the incorrect person. Therefore, the delay was neither deliberate nor intentional. It was beyond the control of the appellant. After receipt of the order, appellant has filed the appeal within the time allowed u/s 249(2) of the Act. We find that the CIT(A) has not considered the above request of the assessee to condone the delay and dismissed the appeal without merit. Perusal of the facts mentioned above reveals that the assessee had in fact given the reasons for delay in filing appeal. The reasons given was not at all considered by the CIT(A). Moreover, the order was not passed as per the mandate of section 250(6) of the Act. Therefore, we deem it proper to set aside the order of CIT(A). Since the AO has also passed an ex parte order u/s 144 of

the Act, we restore the matter to his file for fresh assessment 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 AO by not seeking adjournment without valid reasons. For statistical purpose, the appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 22/08/2025.

**Sd/-**  
**(SUCHITRA R. KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Surat

दिनांक/ Date: 22/08/2025

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

By Order

**// TRUE COPY //**

Assistant Registrar/Sr. PS/PS  
ITAT, Surat