

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.36/RJT/2025  
निर्धारणवर्ष /Assessment Year: 2014-15

Jyotshna Bhikhubhai Vadher Madhav Park Rokadiya Hanuman Road Khapat, PORBANDAR-360575 (Guj) PAN : AEMPV 5898M	बनाम Vs.	The ITO, Ward-2(4) PORBANDAR.
(अपीलार्थी/assessee)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sagar Shah, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Id. Sr. DR

सुनवाई की तारीख/Date of Hearing : 12/06/2025

घोषणा की तारीख/Date of Pronouncement : 25/08/2025

**ORDER**

**Per, Dr. Arjun Lal Saini, Accountant Member:**

By way of this appeal, the assessee has challenged correctness of the order dated 20.11.2024 passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act 1961 ( in brief “the Act”), for the assessment year 2014-15.

2. Grievances raised by the assessee are as follows.



1. The order passed by the Ld. Commissioner of Income (Appeals), NFAC under section 250 of the Income Tax Act dated 20.11.2024 is bad in law as well as on the facts because Ld. CIT(A) without considering the merits for condoning the delay in filing appeal originally. As the original appeal was filed belated only by 44 days due to genuine reason of car accident of tax consultant Rajan Thakkar. And the delay of 1700 days in filing appeal electronically was due to procedural part by the order of Ld. CIT dated 27.07.2023 in giving direction to file appeal electronically.

2. Based on the facts and circumstance of the case, the order passed by the Id. CIT(A) is bad in law as Ld. CIT(A) has failed to consider that there is genuine delay in filing appeal as the regular tax consultant of the appellant has met with car accident and under the treatment for 2 months and in appointing new consultant to file appeal before the Commissioner of Income Tax (Appeals). Moreover, the E-filed appeal is not accepted due to reason that as delay is more than 1700 days and the same is barred by limitation, which is without appreciating the fact that Ld. CIT(A) has taken 2305 days (04/04/2017 to 27/07/2023) to give direction to file appeal electronically. Hence the delay in filing appeal electronically is not attributable in any manner to the appellant.

3. Based on the facts and circumstance of the case, the order passed by the Id. CIT(A) and the Ld. AO bad in law as well as on the facts as none of the lower authorities have appreciated that Accountant of the appellant has put wrong figures in the balance sheet while filling the return of income for the A.Y. 2014-15. Appellant has also placed on the record, revised Income Tax Return, however Ld. AO has not considered the due to mere reason that instead of "Revised", "Original" was written on the computation.

4. Based on the facts and circumstance of the case Id. CIT(A) and the Ld. AO while passing the order has erred in law as well as on facts that appellant is engaged in small cooking business and having huge investment/asset of Rs.1,44,61,969/- is not possible as the figures are inflated inadvertently while filing return of income by accountant of the appellant and appellant was unaware about such error. In order to bring correct balance sheet on the records appellant has duly executed the affidavit, which was not considered during the assessment stage and during first appellate stage, as CIT(A) has not considered the merits of the case.

5. The Learned Income Tax officer and the Commissioner of Income Tax (Appeals) has erred in law as well as on facts while not considering the fact that each year is a separate assessment year but the assessment of income cannot be made ignoring the fact already available on record for the past year as well as the subsequent years which are placed on record. On the basis of the past as well as subsequent year's record, you will appreciate that the appellant has no capacity or calibration to earn the allegedly wrong income which has been reported that invested in the alleged asset.

6. The Learned Income Tax officer and the Commissioner of Income Tax (Appeals) has erred in law as well as on facts while not considering the fact that looking at the nature of business of the appellant i.e. business of cooking class, it is not possible to smash such a huge amount wealth in a short period of time. This fact is confirmed on para 2 of page 4 of the assessment order where-in AO writes that "one could not earn such a profit that such huge investment is made in the movable and immovable property". He further writes on para 3 of page 4 of the assessment order that "It appears that accounts are fabricated and you have not been able to produce any information and evidence....",



*An affidavit in respect of an error is filed, which has not been disbelieved or nothing has been brought on record against the affidavit of an accountant and assessee.*

*7. Based on the facts and circumstance of the case, the order passed by the Id. CIT(A) and by Ld. AO is bad in law as lower authorities are failed to consider that even accountant of the appellant has accepted his mistake and put forth the affidavit regarding mistake made by him in filing return of income of the appellant for the A.Y. 2014-15.*

3. At the outset, the Ld. Counsel for the assessee, submitted before the Bench, that the assessee under consideration has filed the appeal physically before the Id. CIT(A) on 04.04.2017. To file the appeal electronically, the relevant notification was issued by the CBDT w.e.f. 1-4-2016. However, there were no much awareness about the Notification of the CBDT, among the taxpayers, with respect to filing of the appeal in electronic mode. Therefore, the assessee was unaware, whether the appeal is to be filed electronically before the Id. CIT(A), as per CBDT instructions. Since, the assessee has filed the appeal physically on 27.07.2023, therefore, the Commissioner of Income Tax directed the assessee to file appeal electronically. Therefore, the Id. CIT(A) has dismissed the appeal of the assessee, which was filed physically with the direction that the assessee should file the appeal electronically.

4. The Id. Counsel submitted that as per the direction of the Id. CIT(A), the assessee has filed the appeal electronically before the Id. CIT(A) which was late by 1700 days, (after excluding COVID-19 pandemic period), that is, after the order of the Id. CIT(A) dated 27.07.2023. Therefore, the appeal filed by the assessee electronically was dismissed by the Id. CIT(A), stating that the appeal was filed by the assessee, which was barred limitation of 1700 days. Therefore, the Id. CIT(A) did not condone the delay, and dismissed the appeal of the assessee, which was filed by the assessee electronically. The Id. Counsel for the assessee in this scenario prayed the Bench that justice should not be denied to the assessee, therefore, if the assessee has filed appeal manually, it should be



admitted, and then matter may be restored back to the file of AO for fresh adjudication, as the assessee wants to file some additional evidences. The Id. Counsel for the assessee pointed out that first appeal filed before the Id. CIT(A), which was filed physically, was also delayed by 44 days, and for that, the assessee has given sufficient reasons to condone the delay. However, the Id. CIT(A) did not admit the appeal of the assessee, as the assessee did not file the appeal electronically.

5. On the other hand, the Id. Sr. DR submitted that if the matter is remitted back to the file of lower authorities, then suitable cost may be imposed on the assessee, as the assessee has wasted the time and resources of the lower authorities.

6. We 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. We note that impugned order before us of Ld. CIT(A), is dated 20.11.2024, wherein learned CIT(A) did not condone the delay of 1700 days and dismissed the appeal of the assessee. We note that when the appeal was filed by the assessee for the first time on 04.04.2017, before Id. CIT(A), then at that point of time, there was no much awareness amongst the taxpayers, whether the appeal is to be filed before the Id. CIT(A), on electronic mode or not. Therefore, the assessee was in the impression that the appeal was to be filed physically, therefore, the assessee has filed appeal before the Id. CIT(A), physically, and the same was dismissed by the Id. CIT(A) in *limine*, stating that assessee has not filed the appeal electronically. The learned CIT(A) also directed the assessee to file the appeal electronically.

7. Then after, as per the direction of the learned CIT (A), the assessee has filed the appeal electronically, before the learned CIT(A), however, it was barred by limitation by 1700 days, (excluding Covid, 19 pandemic period), therefore



learned CIT(A) did not condone the delay and dismiss the appeal of the assessee. Against the said impugned order of learned CIT (A), the assessee is in appeal before us and also filed the additional evidences before the Bench.

8. We note that the above delay of 1700 days in filing the appeal before the ld. CIT(A) is not a delay in legal sense, as the learned CIT(A), asked the assessee to file the appeal electronically, therefore assessee, filed the appeal electronically and then the learned CIT(A) counted the days of delay from the date of original order of the assessing officer, which is not acceptable. The assessee has filed the appeal electronically, as per the direction of the ld. CIT(A), which is authority, who has directed the assessee to file the appeal electronically and accordingly the assessee has filed the appeal electronically. Therefore, delay in filing the appeal electronically, which is counted by the ld. CIT(A) from the date of passing the original assessment order, is not acceptable. The delay of 1700 days has occurred because ld. CIT(A) instructed, the assessee to file the appeal electronically. Hence, in these circumstances, we condone such delay of 1700 days.

9. The learned Counsel for the assessee also stated before us which is mentioned in the grounds of appeal also that assessee has put wrong figures in the balance sheet while filling the return of income for the A.Y. 2014-15, ( by adding zero by mistake) for that assessee has also placed on the record, revised Income Tax Return, and an affidavit of the accountant about the mistake committed by the accountant. Therefore, we direct the assessing officer to consider the revised return of the assessee and the affidavit thereon and then adjudicate the issue, on merit, in accordance with law.

10. We also note that assessee wants to submit additional evidences, before the lower authorities, to prove his claim. Therefore, instead of sending the matter back to the file of the ld. CIT(A), the matter is restored back to the file of the assessing officer (AO). We accept prayer of the assessee, and accordingly, we



set- aside the order of the Id. CIT(A) and remit the issue back to the file of the assessing officer, with the direction to consider the revised return of the assessee and affidavit thereon, and adjudicate the issue in accordance with law.

11. In the result, appeal filed by the assessee is allowed for statistical purposes, in above terms.

Order is pronounced in the open court on 25/08/2025

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR.ARJUNLAL SAINI)**  
**ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date:25/08/2025

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

- अपीलार्थी/ The assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot