



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. 239/RJT/2025

निर्धारण वर्ष /Assessment Year: (2008-09)

Damjibhai Lekharjibhai Thavrani C/o. Sarda & Sarda (CA), Sakar 1st Floor, Dr. Radha-Krishnan Road, Opp. Rajkumar College, Rajkot 360001	बनाम Vs.	Income-tax Officer, ITO Ward – 1 Income Tax Office, Bhootnath Chamber, Junagadh – 362001
स्थायीलेखासं./जीआइआरसं./PAN NO. : AEYPT7701B		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Vimal Desai, Ld. AR  
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld. CIT (DR)

सुनवाई की तारीख/Date of Hearing : 19/08/2025  
घोषणा की तारीख/Date of Pronouncement : 29/08/2025

**आदेश / ORDER**

**PER DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the assessee, pertaining to Assessment Order (AY) 2008-09, 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(Appeals) (in short “Ld. CIT(A)”, dated 10.02.2025, which in turn arises out of a penalty order passed by the Assessing Officer u/s 271(1)(c) of the Act, dated 22.08.2016.



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

*“1. The penalty order u/s. 271(1)(c) of the Act is bad in law.*

*2. The learned Assessing Officer has erred in law as well as on facts in levying the penalty 8,40,37,155/- u/s. 271(1)(c) of the Act.*

*3. The Id. CIT(A) has erred in law as well as on facts in dismissing the appeal as non-maintainable without condoning the delay in filing the appeal.”*

3. The appeal filed by the assessee is barred by limitation by 55 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 Ld. Counsel has explained the reasons for delay stating that assessee was suffered severe chest pain and was badly engaged for his medical treatment. The Ld. Counsel for the assessee submitted the medical report for perusal of the Bench. The Ld. Counsel stated that delay was neither wilful nor deliberate, but due to the circumstances beyond his control. The Ld. Counsel requested that in the interest of justice, the delay may be condoned and appeal may be decided on merit.

4. On the other hand, the Learned Senior DR for the Revenue submitted that Bench may decide the matter of condonation of delay, as it thinks fit.

5. We have heard both the parties on this preliminary issue. In the affidavit, it is submitted that assessee had undergone medical treatment and as a result, the assessee could not file appeal before the Tribunal in time. We note that the reasons given in the petition for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Considering all these facts, we find that delay is neither deliberate nor intentional, but it was due to medical treatment of assessee. The Ld. Sr-DR has also not raised



objection to condone the delay. We, therefore, condone the delay of 55 days and admit the appeal for hearing.

6. At the outset Ld. Counsel for the assessee submitted that the Assessing Officer passed assessment order u/s 147 r.w.s 144 and Ld. CIT(A) passed appellate order in ex parte proceedings. The Ld. Counsel submitted that now assessee is ready with the documents and details 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) as the quantum appeal of assessee has already been restored back to the file of Ld. CIT(A).

7. The Ld. Sr-DR of the Revenue has raised no objection if the matter is remitted back to the file of lower authorities.

8. 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. AR of the assessee requested 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 undertook the responsibility that all the details would be filed before Ld. CIT(A) if another opportunity is granted to the appellant. Besides, the quantum appeal of the assessee in ITA No.58/Rjt/2025 for A.Y. 2008-09, had been restored back to the file of Ld. CIT(A) for fresh adjudication, therefor this penalty appeal of the assessee for A.Y. 2008-09, should also be restored back to the file of Ld. CIT(A). 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 appellate 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 the assessee is allowed for statistical purposes.

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

**Order is pronounced on 29/08/2025 in the Open Court.**

Sd/-  
**(DINESH MOHAN SINHA)**  
न्यायिकसदस्य/**Judicial Member**

राजकोट/Rajkot

दिनांक/ Date: 29/08/2025

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकरआयुक्त/ CIT
- आयकरआयुक्त(अपील)/ The CIT(A)
- विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

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

True Copy

By order/आदेशसे,

सहायकपंजीकार  
आयकरअपीलीयअधिकरण, राजकोट