

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH
BEFORE SHRI DINESH MOHAN SINHA, JM AND
SHRI BIJAYANANDA PRUSETH, AM
आयकर अपील सं./ITA No.582/SRT/2025**

Assessment Year: (2011-12)

(Physical Hearing)

Baldevbhai Vithhakhbhai Patel, C/O Sub-Divisional Agriculture Office Kotlav, Opp – Gram Panchayat Pardi, Killa Pardi, Pardi - 396125.	Vs.	ITO, Ward – 1, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFGPP9354P		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	09/09/2025
Date of Pronouncement	12/09/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

This appeal emanates from the order dated 16.01.2025 passed under section 250 of the Act (in short, ‘the Act’) by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short, “the CIT(A)”] for the assessment year (AY) 2011-12.

2. The grounds of appeal raised by the assessee are as follows:

“1. The Ld CIT(A), NFAC has erred and was not just and in law in facts of the case and in law in confirming the addition of 19,50,000/- u/s 68 of the Income-tax Act.

2. The LD CIT, NFAC has erred and was not just and proper on the facts of the case and in law in confirming the addition of 2,00,000/- u/s 68 of the Income-tax Act.

3. PRAYER

3.1 The addition made by Ld Assessing Officer and confirmed by the Ld CIT(A) – NFAC may be kindly deleted.

3.2 Personal hearing may be granted.

3.3 Any other relief that your honours may deem fit may be granted.

4. *The appellant reserves the right to add, alter, amend, or withdraw any grounds of appeal.*”

3. The appeal filed by the assessee is late by 20 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit for condonation of delay in filing of appeal before the Tribunal. It has been stated that the notices by the CIT(A) were sent on wrong e-mail id on ‘agricultureparadi@gmail.com’ instead of ‘rrassociatesvapi@gmail.com’ (mentioned in Form 35). After receiving a phone call from the revenue regarding recovery of the demand notice in the month of February, 2025, his tax consultant checked the portal for latest updated status of the appeal before the CIT(A). Hence, the documents for the preparation of the appeal could not be sent to the Sr. Tax Consultant in time, resultantly, there was a delay of 19 days has occurred. The assessee submitted that the delay was neither intentional nor deliberate. He requested that in the interest of justice; the delay may be condoned and admitted for hearing. On the other hand, the learned Senior Departmental Representative (ld. Sr. DR) for the revenue did not have any objection, if the delay is condoned.

4. We have heard both the parties and perused the materials available on record. We find that the delay in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, the assessee is not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delay in filling the appeal is condoned and we proceed to decide the case on merit.

5. The facts of the case in brief are that the assessee had not filed his return of Income for AY 2011-12. After recording the reasons, the case was reopened by issuing notice u/s 148 of the Act with the approval of the ld. PCIT, Valsad. Various notices u/s 142(1) and 143(2) of the Act were issued

to the assessee. In response to the notice u/s 148 of the Act on 26.03.2018, the assessee filed his return of income on 15.11.2018, declaring net taxable income of Rs.2,20,110/- and net agricultural income of Rs.2,70,000/-. Based on the information available with the Department, the Assessing Officer (in short, 'AO') noticed that the assessee had deposited cash of Rs.16,50,000/- in his account, maintained with Bank of Baroda. The AO called obtained information from the Bank of Baroda, which revealed that the assessee had deposited cash of Rs.16,50,000/- in above bank account from 23.08.2010 to 17.03.2011. The AO required assessee to explain nature and source of cash deposit of Rs.16,50,000/- and other credit entries of Rs.7,00,000/-, Rs.2,00,000/- and 56,000/-. In absence of satisfactory explanation, the AO relied on the decision of Hon'ble Supreme Court in case of Kale Khan Mohammad Hanif vs. CIT, (1963) 50 ITR 1 (SC) and Roshan Hi Hatti vs. CIT, (1977) 107 ITR (SC) and held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. He also relied on the decision of Hon'ble Delhi High Court in case of CIT vs. Oasis Hospitalities Pvt. Ltd., 333 ITR 119 (Del). The AO observed that the assessee failed to prove the identity, creditworthiness and genuineness of impugned transactions. Therefore, the AO made additions Rs.19,50,000/- as unexplained investment u/s 69A of the Act and Rs.2,00,000/- as unexplained cash credit u/s 68 of the Act. The total assessed income of Rs.23,70,110/- against the returned income of Rs.2,20,110/-.

6. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). There was a delay of 150 days in filing appeal before the CIT(A). The CIT(A) condoned the delay and disposed the appeal on merits. He has reproduced the Statement of Facts along with grounds of appeal are at pages 5 to 7 of his order. The CIT(A) issued 4 notices of hearing, i.e., on

25.02.2021, 28.07.2023, 29.11.2023 and 18.12.2024, but the assessee failed to file any reply. In view of the non-compliance, the CIT(A) passed an ex parte order based on the materials available on record. The CIT(A) relied on the decisions of Hon'ble Supreme Court in case of CIT vs. B. N. Banerjee & Ors, 118 ITR 461 (SC) and held that an appeal means an effective appeal and that to "prefer an appeal" would mean effectively prosecuting an appeal purposefully and constructively. The CIT(A) also relied upon the decisions in cases of (i) M/s Chemipol vs. UoI, Central Excise Appeal No.62 of 2009, (ii) Nandramdas Dwarkadas, AIR 1958 MP 260 (Mum.), (iii) Dr. P. Nalla Thampy vs. Shankar [1984 (supp) SCC 63], (iv) New India Assurance vs. Srinivasan (2000) 3 SCC 242, (v) Whirpool of India Ltd. Vs. DCIT, ITA No.2006/Del/2001, dated 19.12.2001, (vi) Chadha Finlease Ltd. Vs. ACIT, ITA No.3013/Del/2011, dated 2012.2011 (vii) CIT vs. Gold Leaf Capital Corporation Ltd., ITA No.798 of 2009 (Delhi). The CIT(A) observed that the appellant had not bothered to contradict the findings of the AO through any submissions or material which would help his case. Since the assessee failed to discharge the onus by producing cogent evidence and explanation, the CIT(A) upheld the addition made by AO by following the ratio in cases of Kale Khan Mohammad Hanif (supra), Roshan Di Hatti (supra) and Nirmal Singh & Ors, Cr No.3791 of 2013, dated 01.05.2014 (P & H). In absence of any reasonable, cogent and valid arguments/contentions, the CIT(A) upheld the addition made by the AO and dismissed the appeal.

7. 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 assessee could not represent his case before the CIT(A) and the order being ex parte order, stood vitiated on account of violation of principles of natural justice. The Id. AR submits that during the appellate proceedings, the assessee could not appear before the CIT(A) due to

circumstances beyond his control. Adequate opportunity of hearing was not given to the assessee, therefore, ld. AR contended that one more opportunity should be given to the assessee to plead his case before the CIT(A).

8. On the other hand, the learned Senior Departmental Representative (ld. Sr. DR) for the revenue supported the order of CIT(A). He, however, has no objection if the matter is restored to the file of CIT(A) for fresh adjudication.

9. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the assessee did not respond to the notices issued to him by the CIT(A). The CIT(A) has upheld the addition made by the AO and dismissed the appeal by observing that the assessee failed to discharge the onus by producing cogent evidence and explanation. We find that assessee could not plead his case before the CIT(A). We find that the CIT(A) has passed the ex parte order due to non-compliance by the assessee. The ld. AR contended that another opportunity of hearing may be given to the assessee to plead his case on merit. It is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving deeper into the merits of the case, in the interests of justice, we set aside the order of CIT(A) and restore the matter to the file of CIT(A) for fresh assessment subject to payment of cost of Rs.5,000/- (Rupees Five Thousand only) to the credit of the **“Prime Minister’s National Relief Fund (PMNRF)”** within 3 weeks after receipt of this order and to pass a speaking order after affording sufficient opportunity of being heard to the assessee. The assessee is also directed to furnish explanations and submit the relevant details and documents before the CIT(A). For statistical purposes, the appeal of the assessee is treated as allowed.

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

Order is pronounced on 12/09/2025 in the open court.

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 12/09/2025

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