

**आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER  
आयकर अपील सं./ITA No. **129/SRT/2025** (AY 2011-12)  
(Hybrid hearing)

Narpatsinh Prabhatsinh Solanki 1 AT-Bamroli, AT-Afwa Tal-Bardoli- 394 620 [PAN : AHKPS 8743 D]	बनाम Vs	Income Tax Officer, Ward-1, Bardoli, 2 <sup>nd</sup> Floor, BSNL Building, Opp Jalaram Mandir, Station Road, Bardoli-394 601
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri P.M.Jagasheth, CA
राजस्व की ओर से /Revenue by	Shri Ajay Uke- Sr-DR
सुनवाई की तारीख/Date of hearing	05.08.2025
उद्घोषणा की तारीख/Date of pronouncement	18.08.2025

**Order under section 254(1) of Income Tax Act**

**PER DINESH MOHAN SINHA, JUDICIAL MEMBER:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeal) [for short, "Ld. CIT(A)"] dated 08.08.2024 for the assessment year 2011-12, which in turn arises out of an assessment order passed by the Assessing Officer (in short, "AO") under section 144 r.w.s 147 of Income Tax Act, 1961 ('the Act') on 13.12.2018. The assessee has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in reopening the assessment/s 147 of the Act and notice u/s 148 of the Act was issued.

2. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs 16,94,117/- being cash deposits in bank account of treated as alleged unexplained income u/s. 69A of the income tax Act, 1961. The learned ITO failed to understand that the cash deposit were made by the appellant

*out of agricultural income as well as accumulated savings. As such the deposits are no more unexplained.*

*3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer erred in ignoring the return filed, it is necessary to issue notice u/s. 143(2) of the before passing assessment order.*

*4. On the facts and in the circumstances of the case as well as the law on the subject, the learned Assessing Officer has not issued notice u/s. 143(2) of the I.T. Act, 1961.*

*5. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has not offered adequate opportunities to hear the case and hence, the case may please be set aside and restored back to the CIT(A) or AO.*

*6. It is therefore prayed that the above addition may please be deleted as learned members of the tribunal may deem it proper.*

*7. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

2. That the assessee filed an appeal on 03.02.2025 against the order dated 08.08.2024 passed by Ld. CIT. The Ld. Counsel for the assessee stated that there is a delay of 119 days in filing the appeal, delay has occurred due to following relevant reasons:

*"In respect of the above, I would like to submit that I have filed an appeal under section 253(1) of the Income Tax Act, 1961 on 03.02.2025 vide ITA No.129/SRT/2025 against the order of the Commissioner (Appeals) relating to AY 2011-12 made on 08.08.2024, which was uploaded on the Income Tax e-filing portal under e-proceedings. Though this appeal should have been filed in the office of the Tribunal on or before sixty days from the date of communication of the order, it could not be filed in time because I was unaware of the online income tax proceedings, my consultant had prepared appeal Form-35 and he had clearly mentioned his email Id i.e. [kansariwalachevli@gmail.com](mailto:kansariwalachevli@gmail.com) in Appeal Form-35; however, the last two hearing notices under section 250 of the Act and the CIT(A) order were issued and served only on email ID i.e. [pateltax5420@gmail.com](mailto:pateltax5420@gmail.com), which was created by my previous consultant for return filing work only, hence he had not checked the email and he could not send the order of CIT(A) to me within time limit.*

*When I visited to the office of my 'AR', he checked the e-filing portal and found that the order of CIT(A), NFAC, Delhi had already been passed and the appeal had been dismissed, then we downloaded the order and immediately filed an appeal on 03.02.2025 before the Hon'ble ITAT, Surat, against the order of the Hon'ble CIT(A), NFAC, Delhi. Hence, the appeal is delayed by 119 days, and the necessary arrangements could not be made for filing the appeal before the Hon'ble ITAT, Surat, within the prescribed time.*

*In view of the above fact, it is clear that is the delay in submission of the appeal is due to good and sufficient reasons, therefore, pray that the delay in filing the appeal*

*should be condoned and the appeal should be treated as filed within the allowed time."*

3. The Ld. Counsel of the assessee (AR), stated that because of no order served on the assessee on registered email or on physical mode on the assessee. The assessee came to know about the order dated 14.09.2024. Hence the delay is due to non-receipt of order the assessee hence delay may kindly be condoned.

4. On the other hand, Ld. D.R. objected the application for condonation of delay and prayed for rejection of the application and the appeal.

5. We have heard both the party and found that delay is not because of the assessee that assessee was unaware about the on line proceedings that e-mail address was given by the counsel when do not inform to assessee; since no order has been received by the assessee. And after receiving the order by the assessee, the assessee immediately filed the appeal before this Tribunal. That the assessee has given due care and attention towards this case but the Ld. Counsel has not informed to the assessee time to time. Keeping in view of the above circumstances and in interest of justice we are hereby condone the delay in filling the present appeal and decide the appeal on merit.

6. Brief facts of the case that the assessee has not filed his original return of income for the A.Y. 2011-12. As per information available on records, the assessee has made cash deposits of Rs.20,30,000/-during the year. To examine the source of cash deposit, the case of the assessee was re opened u/s. 147 of the Act after recording reasons and obtaining the necessary approval from the Authority. A notice u/s. 148 of the Act dated 28.03.2018 was issued and served upon the assessee by speed post. The case was received on transfer from office of the Income Tax Officer, Ward-2(3)(3), Surat on 18.10.2018. Thereafter, due to change in incumbent, a notice

u/s 142(1) r.ws.129 of the Act dated 18.10.2018 was also issued and served upon the assessee. In response to the said notices issued u/s.148 & 142(1) of the Act, the assessee neither filed his return of income for the A.Y 2011-12 nor has made any submission, a show cause letter was issued to the assessee on 16.11.2018 requesting the assessee to show cause as to why the total amount of cash deposits to the tune of Rs.30.10,000/- should not be treated as unexplained cash deposits and add total income. The assessee vide his letter dated Nil has submitted the details which consists of copy of bank statements, salary certificate, proof of agricultural income and sale agreement of agricultural land. Assessee has submitted further details such as block wise details, certificate, copies of 7/12 and 8A (related to land). The reply of the assessee is duly considered and placed on records. On perusal of said noticed that the assessee was an agriculturist and doing agricultural activities and derived income from Shree Madhi Vibhag Khand Udhog Sahakari Mandli Limited as an employee during the year. The assessee has cultivated sugar cane and produced the same sold to the Shree Madhi Vibhag Khand Udhog Sahakari Mandli Limited. The assessment was computed as under:

Addition on account of unexplained cash [18,50,000 -1,55,883]	Rs.16,94,117/-
Assessed total income	Rs.16,94,117/-
Rounded off	Rs.16,94,120/-

7. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A) dismissed the case with following observation:

*"in the absence of any supporting evidences produced during the proceedings, there is no reason to interfere -with the decision of the AO The onus was on the appellant to explain satisfactorily the nature and source of the cash deposits, and mere averments are not going to help his case in the absence of any supporting documents. Accordingly, I confirm the addition of Rs.16,94.117/-and the Ground No. 1 is dismissed.*

*In the result, the appeal is dismissed"*

8. That the assessee filed an appeal against the impugned order of the Ld. CIT(A) dated 08.08.2024 before us.

9. During the course of argument, the Ld. AR of the assessee submitted that the AO passed ex-parte order and before the Ld. CIT(A) assessee could not file evidences. The Ld. AR prayed that one more opportunity may kindly be given to the assessee to explain the case before the lower authority.

10. On the other hand, Ld. Sr-DR for the revenue, relied upon the order of the Ld. CIT(A) and not objected to the prayer of the Ld. AR.

11. We have heard both the parties and perused the material available on record and also perused the order of Ld. CIT(A) and Paper-Books submitted before us. We note that several notices have been issued by the Ld. CIT(A), but there was a compliance to the notice by the assessee.

"With reference to above stated appeal, my submission is as follows. Addition of Rs. 16,94,117/- on account of unexplained cash deposits in bank account. Non issuance of notice u/s 143(2) of the Act.

(1) The learned I.T.O. completed the assessment u/s 144 r.w.s. 147 of the Act vide assessment order dated 13/12/2018.

(2) The assessee had filed the return of income for A.Y. 2011-12 in pursuance of notice u/s 148 of the Act on 10/12/2018.

(3) The learned IT.O completed the assessment without issuing notice u/s 143(2) of the Act.

(4) Merely because the assessee participates in the proceedings pursuant to notice u/s 148 of the Act, it does not obviate the requirement of the Assessing officer having to issue to the assessee a notice under section 143(2) of the Act issue of notice by the Assessing officer u/s 143(2). The requirement of issuance of such notice is a jurisdictional one. It does go to the root of the matter as far as the validity of the reassessment proceedings u/s 147/148 of the Act is concerned.

(5) The failure of the Assessing officer in reassessment proceedings, to issue notice u/s 143(2) of the Act prior to finalising the reassessment order cannot be condoned by referring to section 292BB of the Act.

(6) When the assessee had filed return of income, it is mandatory to issue notice u/s 143(2) of the Act before finalising the assessment proceedings

(7) The Hon. Delhi High Court had also taken the similar view in the case of Pri CIT VS. Silver Line (2016) 383 ITR 455 (Delhi).

(8) In the case of CIT Vs Panorama Builders Pvt. Ltd. (Tax Appeal No. 435 of 2011) the Hon. Gujarat High Court had decided as follows.

(9) From the above it is clear that the assessment made without issuing notice u/s 143(2) of the Act is null and void. Respectfully following the ratio laid down in the judgments of Hon-Delhi High Court and Hon. Jurisdictional Gujarat High Court, Your Honour is humbly requested to quash the assessment made and give fair justice to the appellant.

We find that the Ld. CIT(A) disposed off the appeal by an *ex-parte* order without adjudication on merit. After considering the facts and circumstances of the case we are of the view that, in the interest of justice, an opportunity should be given to the

assessee to present his case before the lower authority. We note tht Ld. AO has passed an order u/s 144 of the Act. Accordingly, we remand this matter back to the file of AO for a fresh adjudication after giving opportunity of hearing to the assessee. The assessee is also directed to ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law.

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

Order pronounced in under proviso to Rule 34 of the ITAT Rules, 1963  
on 18/08/2025.

Sd/-  
(BIJAYANANDA PRUSETH)  
लेखा सदस्य/Accountant Member

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

सूरत / Surat Dated: 18/08/2025

Dkp Outsourcing Sr.P.S\*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत