

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.**

&

DINESH MOHAN SINHA, JM

आयकर अपील सं./ITA No. 382/RJT/2025

(निर्धारण वर्ष / Assessment Year: (N.A.))

(Hybrid Hearing)

Ghanshyambhai Mohanbhai Patel Near Swaminarayan Mandir, AT Umarda, Ta.Muli, Dist. Surendranagar-363 510	Vs.	Income Tax Officer, Ward-4, Surendranagar, Income Tax Office, Irish Building, Opp. Mela Medan, Surendranagar-363 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BRJPP 6166 K		
(Appellant)		(Respondent)

Appellant by : Shri Pinal Raval, Ld. AR

Respondent by : Shri Abhimunyu Singh Yadav, Sr.D.R.

सुनवाई की तारीख/ **Date of Hearing** : **19/08/2025**

घोषणा की तारीख/**Date of Pronouncement** : **29/08/2025**

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee against the order passed under section 250 of the Income-tax Act, 1961(hereinafter referred to as ‘the Act’) dated 17.12.2024 by the Ld. Commissioner of Income Tax Appeal, Addl/JCIT(A)-2 Chandigarh (in short ‘‘Ld. CIT(A)’’) dated 17.12.2024 for assessment year (AY) 2017-18, which in turn arise out of an assessment order passed by Assessing Officer u/s 144 of the Act. On 18.08.2019.

2. The Grounds of Appeal raised by the assessee are as follows:

“GROUND OF APPEAL on behalf of the appellant- Shri Ghanshyambhai Mohanbhai Patel (A.Y. 2017-18).

*** Cash Deposit of ₹12,16,500 during the Demonetization Period (09.11.2016 to 30.12.2016):**

The assessee had deposited a total of ₹ 12,16,500 in cash in his bank account during the demonetization period. This amount represents business receipts arising from cash sales in the ordinary course of business, primarily involving resale of fertilizers to farmers, a business that predominantly operates on a cash basis in rural India.

*** Reason for Non-filing of Return for A.Y. 2017-18:**

The assessee could not file the return of income for the Assessment Year 2017-18 within the prescribed time limit due to my net taxable income for the Assessment Year 2017-18 was below the taxable-limit; hence, I did not file the Return of Income (ROI) for that year. It is respectfully submitted that the failure to file the return was neither intentional nor with any mollified intention to evade tax. However, upon issuance of notice under Section 142(1), the assessee submitted necessary financial statements including the balance sheet, profit & loss account, trading account, capital account, and bank statements to establish the source of the cash deposits.

*** Allegation of Fabrication of Books of Accounts:**

The Assessing Officer has alleged that the accounts submitted were fabricated and not based on actual day-to-day bookkeeping. This allegation is unjust and incorrect. The books of accounts were prepared based on actual transaction data and corresponding bank entries. The AO has failed to provide any documentary proof to support the allegation of fabrication.

*** Rejection of Opening Cash Balance of ₹6,10,835:**

The opening cash balance shown by the assessee was a result of accumulated capital and savings from previous business activities. Although ROI for A.Y. 2016-17 was filed and order accepting all books of accounts are correct passed by NFAC. Merlyn income tax returns for A.Y. 2017-18 due to net profit below taxable limit was not filed, the existence of capital cannot be outrightly denied without independent verification. The AO's rejection of the opening balance is arbitrary and not supported by cogent reasoning or material evidence.

*** Working of Day-to-Day Cash Summary and Alleged Negative Cash Balance:**

The AO has reconstructed a cash summary and alleged that the assessee had a peak negative cash balance of ₹5,14,863 on 23.03.2017. However, this working is purely presumptive and does not factor in the timing differences of actual receipts and expenses. It is common in such businesses that cash is first deposited and later expended for business purchases, which may not be immediately visible in reconstructed summaries. Income tax officer ward-4, Surendrangar assessment order dated 18-08-2019. page no 59 point no 4(i). As per cash account ledger opening cash balance. Carry forward from prewise year A.Y. 2016-17 was Rs.6,10,835/-. I had been field my ROI for ay 2016-17 and produced books of account and cash book and assessment order passed by faceless assessment unit confirming cash account ledger it is unfortunate that faceless assessment unit accept all relevant books of account for ay 2016-17 and passed assessment order. Hence, the allegation of unexplained cash based on negative balance is factually incorrect.

*** Addition of ₹5,14,863 u/s 69A as Unexplained Money:**

The addition under Section 69A is unjustified. The AO has ignored the evidence of purchases made from Gujarat Agro Industries and Sahakari Society Ltd. - institutions that deal in agricultural inputs. This confirms that the assessee was engaged in legitimate business and that cash deposits were business-generated. The AO has not brought any evidence on record to show that the cash deposits originated from any other unexplained or non-business source. The Income Tax Officer did not accept books of accounts and passed order U/s. 144 dated 18/08/2019. Addition of Rs.5,14,863/- highest negative cash balance on the basis of cash summary prepared by income tax officer disallow opening cash balance of Rs.6,10,835/- Page No. 59 Para 4 in assessment order passed by income tax officer Ward-4, Surendranagar wrongly not accept my opening cash dated 01/04/2016. Rs.6,10,835/-. As I have business of fertilizer in A. Y. 2016-17. Also and opening cash is carry forward 6,10,835/- although the income tax officer in his assessment order agreed that I am reseller of fertilizer business but not accept opening cash balance Rs. 6,10,835/- because I had not filed ROI for A.Y. 2017-18. Hence income tax office prepared my cash book for A.Y. 2017-18. Para 4(i) page no 59 without allowed opening cash carry forward from previous year Rs.6,10,83 5/- and due to this reason my cash book without opening cash 01-04-2016- Rs.6,10,8357- has negative closing balance and the ITO Ward-4, Surendranagar. Wrongly added highest negative cash balance Rs.5,14,8637-. From date 23-03-2017. Wrongly added highest negative cash Rs.5,14,8637-. Point 4(i) page 59 also treated as undisclosed income is bad in laws not sustainable as all books of account and cash book provided for A.Y 2017-18.

*** Rejection of Books under Section 145 and Estimation under Section 44AD:**

The rejection of books under Section 145 is not warranted as the assessee submitted complete accounts and bank statements. Without identifying any specific defect or inconsistency in the books, invoking Section 145 is arbitrary. Further, the estimation of business turnover at Rs.71,56,000 based on bank payments alone and applying presumptive income under Section 44AD (8%) to determine Rs.5,72,480 as net profit is excessive. I had submitted reply with all details and books of account for A.Y 2017-18. As my net taxable income is Rs.1,96,819/- which is below Taxable limit for A.Y. 2017-18. Hence ROI was not filed the amount of cash deposited during demonetization period Rs.12,16,5007- in Saurashtra Gramin Bank. Umarda Branch is from cash sales made of Fertilizers to farmer.

*** Non-consideration of Proper Explanation and Natural Justice:**

The assessee has responded to various notices and provided substantial records to support his claims. However, the assessment order was finalized without giving proper opportunity or objectively analyzing the submissions. This is a violation of the principles of natural justice. Natural justice refers to the fundamental principles of fair treatment in legal and administrative proceedings, ensuring procedural fairness and impartiality. It's a concept rooted in common law and moral principles, aiming to prevent bias and guarantee due process. Natural justice requires that individuals be given a chance to present their case and defend themselves before any adverse action is taken against them. A fundamental aspect of natural justice is the right to a fair hearing,

which means individuals should be informed of the matter at stake and have an opportunity to respond.

*** Penalty Proceedings under Sections 271AAC and 270A:**

Initiation of penalty proceedings under Sections 271AAC and 270A is premature and unjustified. There is no willful concealment or misreporting. The cash deposits were duly explained to be from the business of fertilizer resale. Hence, these are not cases of unexplained or misreported income under the purview of these penal provisions.

*** Ex-Parte Dismissal by the CIT(A) - Denial of Natural Justice**

The Learned Commissioner of Income Tax (Appeals) erred in law and on facts in passing an ex-parte appellate order under Section 250(6), without appreciating the bona fide reasons for non-compliance and without adjudicating the appeal on merits, despite the availability of documentary evidence on record. This action is in violation of the principles of natural justice and has resulted in grave prejudice to the appellant.

*** Failure to Consider Merits of the Case**

The CIT(A) mechanically dismissed the appeal for non-prosecution, failing to consider the appellant's submissions made during the assessment proceedings, and without examining the material and explanations already on record.

*** Reason for Non-Compliance - Medical Emergency**

The appellant was unable to respond to hearing notices issued by the CIT(A) due to **unforeseen medical circumstances**—specifically, the appellant suffered a **heart attack** during the relevant period and was under **continuous medical treatment**, rendering him physically and mentally unfit to coordinate the appellate proceedings.

*** Failure of Chartered Accountant and Communication Gap**

The appellant had entrusted a Chartered Accountant based in Ahmedabad with the appeal proceedings. However, due to **lack of communication** and failure on the part of the CA to attend to the notices from NFAC/CIT(A), the appellant remained **unaware of the developments**, leading to unintentional non-compliance.

Grounds on Merits

*** Addition under Section 69A - Unexplained Cash Deposits (Rs.5,14,863)**

The CIT(A) erred in law and on facts in confirming the addition of Rs.5,14,863/- under Section 69A as unexplained money, without appreciating the **appellant's explanation** regarding the **opening cash balance, business cash flows**, and other financial records already **submitted to the Assessing Officer**.

*** Rejection of Books of Accounts under Section 145(3)**

The rejection of the appellant's books of accounts by the AO—and its confirmation by the CIT(A)—was unjustified and based merely on the presumption that the return for A.Y. 2016-17 was not filed. This is **not a valid or sufficient ground** under Section 145(3) for rejecting duly maintained books supported by **invoices, bank statements, and stock records.**

*** Unfounded Estimation of Turnover (Rs.71,56,000)**

The CIT(A) erred in confirming the AO's estimated turnover of Rs.71,56,000/- without any **documentary basis or justification**, solely on the basis of **aggregate bank credits**, while ignoring the **actual books of accounts** and **trading records** maintained and submitted by the appellant.

*** Erroneous Addition under Section 44AD (Rs.5,72,480)**

The CIT(A) wrongly upheld the addition of Rs.5,72,480/- as deemed income under Section 44AD. The appellant had already submitted a **detailed profit & loss account**, and the total income was **below the taxable limit**. The invocation of presumptive taxation under Section 44AD was **misapplied and unjustified** in the given circumstances.

*** Non-Consideration of Available Evidence by CIT(A)**

The CIT(A) failed to consider that all relevant documents—including **bank statements, capital account, balance sheet, and P&L account**—were already **submitted before the AO** and were part of the assessment record. Non-consideration of such evidence has led to an erroneous and unsustainable order.

*** Genuineness of Business Transactions**

The appellant is a **small farmer and trader in fertilizers**, carrying on business in a modes manner for several yea? All transactions are **genuine**, and no material has been brought 01 record to prove otherwise. The allegations of concealment are **unsupported and contrary to facts.**

*** Initiation of Penalty Proceedings without Justification**

The AO initiated penalty proceedings under Sections 271AAC and 270A. despite the fact that the additions are **debatable** and subject to verification. The CIT(A) failed to record any finding; on this issue, making the penalty proceedings premature and bad in law.

Prayer for Relief

*** Opportunity for Proper Hearing**

The appellant respectfully prays that, in view of the **bona fide medical reasons**, lack of professional support, and the fact that all relevant documents were already on record, a **final opportunity** be granted to present the case **on merits** before the Hon'ble ITAT.

*** Interest of Justice**

Dismissal of the appeal on technical grounds, without examination of facts and documents, would cause **irreparable hardship** to the appellant. It is respectfully submitted that the appellant be granted an **equitable opportunity to be heard**, and the matter be **remanded back** to the Income Tax Officer Surendranagar. or decided on merits by the Hon'ble ITAT.

*** General Ground**

The appellant reserves the right to **add, alter, amend or withdraw** any of the grounds of appeal at the time of hearing.

Prayer

The appellant humbly prays that the Hon'ble Tribunal may kindly:

- The addition of ₹5,14,863 under Section 69A may kindly be deleted.
- The addition of ₹5,72,480 under Section 44AD as presumptive income may be reduce or reconsidered.
- The penalties initiated under Sections 271AAC and 270A may be dropped.
- The interest levied under Sections 234A and 234B may be recomputed based on the revised income.
- Relief may kindly be granted in the interest of equity, justice, and fair play.
- Set aside the appellate order dated 17/12/2024 passed by CIT(A), Ahmedabad-7.
- Delete the additions made u/s 69A and u/s 44AD amounting to ₹10,87,340/-.
- Restore the matter to CIT(A) or AO for fresh adjudication after granting reasonable opportunity of hearing.
- Pass such other orders as may be deemed fit in the interest of justice.

2. That the assessee filed an appeal on 02.06.2025 against the order dated 17.12.2024 passed by Ld. CIT. The Ld. Counsel for the assessee stated that there is a delay of 192 days in filing the appeal, delay has occurred due to following relevant reasons:

I, Ghanshyambhai Mohanbhai Patel, a 68-year-old illiterate farmer residing in the small village at Umarda, Taluka Muli, Distri Surendranagar, Gujarat 363510. I humbly submit this application for condonation of delay in filing the appeal before this Hon'ble Tribunal. Din/order no : 1TBA/APL/S/250/202 25/1071292650(1), dated 17/12/2024. Appeal no :CIT(AHMEDABAD-7, 10141/2019-20. for the Assessment Year 20: 18. Due to heart diseases I had been under treatment in H Hospital Ahmedabad Dated 17/01/2025. I had heart attack da 19-05-2021 and since 19-05-2021 I am under treatment.

During the financial year 2016-17, I am a farmer and engaged in the business of fertilizer trading in at village UMARDA. Due to old age and poor health, I had to discontinue my business from April 1, 2020. I have been undergoing regular medical treatment heart disease, which has impacted my ability to attend to certain matters in a timely manner.

The CTT Appeal order dated 17-12-2024 dismissed appeal the reason during the course of appeal preceding no reply has file by the appellant I have perused the order of the assessing c and considered the facts of the case. I had assigned the CIT Appeal work to a Chartered Accountant in Ahmedabad, but due to lack of communication my C.A. did not reply to CIT Appeals Hence appeal dismissed ex-parte.

The original order passed by income tax officer Ward-4, Surendranagar. For cash deposit 12,16,000/- for F.Y 2016-17 ex-parte Order u/s. 144. Of Income Tax Act, 1960. Relevant to A.Y. 2017-18. During demonetization.

All though I had been produced all relevant Accounts/documents and details.

Due to my old age and poor health, I had to discontinue the business from April 1, 2020. I was undergoing regular medical treatment for heart disease during the period when the appeal was to be filed. Due to the seriousness of my medical condition, that's why I could not file the appeal within the prescribed time limit. The medical treatment and health issues faced by me are the primary reasons for the delay in filing the appeal. As per doctrine of natural justice.

I request that you condone the delay in filing the appeal, considering the circumstances that led to the delay. I have now completed the necessary formalities and I am filing the appeal along all relevant documents.

I would be grateful if you could consider my request sympathetically, taking into account my health condition and other circumstances.

I, Ghanshyambhai Mohanbhai Patel, the above named deponent do hereby verify on oath that the contents of the affidavit above are true to my personal knowledge and nothing material has been concealed or falsely stated.”

The Ld. Counsel of the assessee (AR), stated that because of no order served on the assessee on registered email or on physical mode order is received by the assessee. Hence the delay is not due to non-receipt of order the assessee hence delay may kindly be condoned.

3. On the other hand, Ld. Sr-DR objected the application for condonation of delay the application for condonation of delay and prayed for rejection of the application and the appeal.

4. We have heard both the party and found that delay is not because of the assessee, since no order has been received by the assessee. And after receiving

the order by the assessee, the assessee immediately file the appeal before this Tribunal. That the assessee has sufficient cause for non compliance. We take a judicious view and in view of the above circumstances and in interest of justice we are hereby condone the delay in filling the present appeal.

5. The brief facts of the case that assessee deposited cash of Rs.12,16,500/- during period of demonetization. The assessee is a non-filer of return. The AO issued notice 142(1) asking to file return for AY 2017-18 on or before 31.03.2018. The assessee has not complied with the term of notice. In the absence of any reply, assessment was completed u/s 144 ex parte on the basis of materials available on record. The addition of Rs.12,16,500/- made by AO.

6. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld. CIT(A) has issued 4 notices to the assessee. On the ground of non-compliance the Ld. CIT(A) has dismissed the appeal vide order dated 17.12.2024. That the assessee filed an appeal against the impugned order of the Ld. CIT(A) before us.

7. During the course of argument, the Ld. AR of the assessee that the assessee is an individual and carrying out business of buying and selling fertilizers since 10 years. But assessee has so far not been filing his return of income as his income has been below the threshold limit. During demonetization period assessee deposited Rs.12,16,500/- with his bank. The Ld. AR prayed to one more opportunity may kindly be given to the assessee to explain the case before the lower authority.

8. 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.

9. We have heard both the parties and perused the material available on record and also perused the order of Ld. CIT(A). We find that Ld.CIT(A) has issued 4 notices on 02.06.2023, 20.07.2023, 11,01,2024, & 21.10.2024 and Ld.CIT(A) observed that assessee failed to comply with the terms of notice meaning thereby nothing as to submitted by appellant. The appellant has negligent and casual approach for representing his case. We note that Ld.CIT(A) has issued notices but there is no finding in the impugned order that notices were properly served or not. After considering the facts and circumstances of the case we are inclined to set aside the order of Ld.CIT(A) and remand this matter back to the file of AO for a fresh adjudication after giving an 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.

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

Order pronounced in the open court on 29/08/2025.

Sd/-
(Dr. A.L. SAINI)
ACCOUNT MEMBER
Rajkot
दिनांक/ Date: 29/08/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICAL MEMBER

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot