

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.461/SRT/2025

Assessment Year: 2012-13

(Hybrid hearing)

Shree Shildha Vibhag Jungle Kamdar Sahakari Mandli AT & Post Nana Pondha, Kaprada Road, Valsad-396 065	बनाम/ Vs.	Income Tax Officer Ward-4, Valsad
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AAAAS 6185 R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओरसे/Appellant by	Shri Rasesh Shah, CA
राजस्व की ओरसे /Respondent by	Shri Abhishek Gautam, Sr. DR
सुनवाई की तारीख/Date of Hearing	23/09/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 23.02.2024 by the National Faceless Appeal Centre, Delhi/Commissioner of Income-tax (Appeals) [in short, 'Ld. CIT(A)'] for the Assessment Year (AY) 2012-13, which in turn arises out of assessment order passed by Assessing Officer (in short, 'AO') u/s 144 r.w.s. 147 of the Act dated 30.11.2018.

2. Grounds of appeal raised by the assessee are as under:

"1. On the facts and in circumstances of the case as well as law on the subject, the learned CFT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard."

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.

3. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs. 88,86,750/-on account of alleged unexplained cash deposits.

4. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making addition of Rs 7,41,221/- on account of alleged unexplained other deposits.

5. It is therefore prayed that the above additions made by assessing officer and confirmed by CIT(A) may please be deleted.

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

3. In the instant case, appeal filed by the assessee is delayed by 360 days. The assessee has filed an affidavit for condonation of delay in filing of appeal before this Tribunal. The assessee submitted that during the filing of appeal before CIT(A), his consultant had clearly mentioned the email ID of his counsel (i.e., camitish@gmail.com) in the Form No. 35 and that he specifically opted 'No' for sending notices/communication on the said email ID. The counsel of assessee did not check the email regularly and owing to this, assessee was not aware about the passing of appellate order in his case. The Ld. AR contended that when assessee had opted 'No' for sending notices through email, therefore, appellate order should have been served physically, however, he did not receive the appellate order physically. The assessee came to know of the appellate order only when his counsel randomly checked the status of the

appeal on ITBA portal. Thereafter, counsel of the assessee suggested to file the appeal before Tribunal. The appellant submitted that the delay in filing appeal was neither wilful nor deliberate and that he was prevented by sufficient cause for not filing the appeal in time. He requested that in the interest of justice, the delay may be condoned and appeal may be decided on merit.

4. On the other hand, Ld. Sr. DR for the Revenue opposed the prayer of the assessee for condonation of delay. He, however, stated that the Bench may decided the preliminary issue as it thinks fit.

5. We have heard both parties on this preliminary issue of condonation of delay. In the affidavit, it is submitted by the assessee that after exercising option of 'No' for sending of notices/appellate order through email, he should have been served appellate order physically in terms of mandate of Form – 35. However, assessee did not receive any appellate order physically due to which assessee was unaware of the appellate order and could not file appeal against the order in time before the Tribunal. Considering all these facts, we find that the assessee was unaware of the proceedings so that he was unable to file appeal before the Tribunal in time. Hence, the reasons given are reasonable and the same would constitute sufficient cause for delay in filing this appeal. We, therefore, condone the delay and admit the appeal for hearing.

6. Brief facts of the case are that there was an information that the assessee had deposited cash of Rs.88,09,250/- in bank account with the State Bank of India during the year under consideration. Since the assessee did not file the return of income, therefore, case of the assessee was reopened and notice u/s.148 of the Act was issued. Subsequently, notices u/s.142(1) were issued seeking details from assessee regarding the source of aforementioned cash deposits. However, assessee remained silent and preferred not to make any submission. Therefore, notice u/s.133(6) of the Act was issued to bank and copy of bank statement was obtained. On perusal of the same, it was seen that assessee had made cash deposits of Rs.88,86,750/- and had credit entries of Rs.7,41,221/- (other than cash) in his bank account. In view of the failure of the assessee to explain the source of funds for aforementioned cash deposits and credits in his bank account, the same were treated as the undisclosed income of the assessee and added to the total income of the assessee. Accordingly, order u/s.144 rws 147 of the Act was passed by the AO on 30.11.2018 determining total income of the assessee at Rs.96,27,970/-.

7. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A). In appellate proceedings, the CIT(A) issued several notices of hearing. The assessee did not file any written submission in response to the above notices. Thereafter, the CIT(A) has referred to Form-35 and assessment order and observed that there is no material on record to warrant interference

in the order of AO. He, therefore, upheld the order of the AO and dismissed the appeal of assessee.

8. Aggrieved by the order of Ld. CIT(A), the assessee filed appeal before this Tribunal. Learned Authorized Representative (Ld. AR) of the assessee assailed the impugned order by contending that assessee could not represent his case before the AO due to circumstances beyond his control and the order being an *ex parte* order, stood vitiated on account of violation of principles of natural justice. The Ld. AR submits that during the appellate proceedings, the assessee could not appear before Ld. CIT(A) as all the notices were sent on the email ID of his counsel who did not intimate him about such notices/proceedings. The Ld. AR submitted that assessee had exercised option of 'No' for sending of notices/appellate order through email, therefore, he should have been served notices and appellate order physically in terms of mandate of Form – 35. However, assessee did not receive any notices/appellate order physically due to which assessee was unaware of the appellate proceedings. Looking to the fact that adequate opportunity of hearing was not given to the assessee, Ld. AR contended that one more opportunity should be given to the assessee to plead his case before the AO.

9. On the other hand, Ld. Sr. DR submitted that assessee was negligent during the assessment proceedings as well as the appellate proceedings, hence, appeal of the assessee should be dismissed.

10. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the appellant has been negligent and not co-operative during the assessment proceedings. Consequently, AO had to complete the 'best judgement assessment' u/s.144 of the Act. Subsequently, the Ld. CIT(A) has upheld the order of the AO and dismissed the appeal by observing that the assessee was totally non-compliant. The Ld. AR submits that during the appellate proceedings, the assessee could not appear before CIT(A) as all the notices were sent on the email ID of his counsel who did not intimate him about such notices/proceedings. The Ld. AR requested for one more opportunity in the interest of justice and fair play since both the AO and CIT(A) have passed the *ex parte* orders due to non-compliance by the assessee before them. We are of the view that one more opportunity should be given to the assessee to plead his case. 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 its case. Accordingly, we hold that the interests of justice would be met in case the AO re-examines the entire issue afresh subject to the payment of cost of Rs.10,000/- (Rupees ten thousand only) by the appellant to the credit of the 'PM National Relief Fund' within three weeks from receipt of this order. Subject to the payment of above cost, we set aside the order of CIT(A) and restore the matter back to the file of AO for *de novo* assessment order after affording sufficient opportunity of being heard to the appellant. The appellant is also directed to furnish explanation and submit the

relevant details and documents before the AO expeditiously without taking adjournment bereft of valid reasons. For statistical purposes, the appeal of the appellant is treated as allowed.

11. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order is pronounced on 26/09/2025 in the open court.

Sd/-
(SANJAY GARG)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ACCOUNTANT MEMBER

सूरत/Surat

दिनांक/ Date: 26/09/2025

Dkp Outsourcing Sr.P.S*

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

- **अपीलार्थी/ The Appellant**
- **प्रत्यर्थी/ The Respondent**
- **आयकर आयुक्त/ CIT**
- **आयकर आयुक्त(अपील)/ The CIT(A)**
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत