



**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. 187 /RJT/2025**  
**(निर्धारण वर्ष/Assessment Year: (2015-16))**

Manish Punjabhai Odedra Near Dr. Jayesh Hathi, Khodiyar Colony Khada Vistra Porbandar, Porbandar-360575	Vs.	Income Tax Officer Ward 2(4) Porbandar-360575
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AAEPO0057B</b>		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sagar Shah, Ld. AR  
राजस्व की प्रत्यर्थी ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR  
सुनवाईकीतारीख/ Date of Hearing : 08/10/2025  
घोषणाकीतारीख/Date of Pronouncement : 28/10/2025

**आदेश / O R D E R**

**Per, Dr. A. L. Saini, AM:**

Captioned appeals filed by the assessee, pertaining to Assessment Year (AY) 2015-16, is directed against the orders passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short “the Ld. CIT(A)/NFAC”], dated 30/07/2024, which in turn arises out of an assessment order passed by Assessing Officer (in short ‘the AO”) u/s 143(3) r.w.s.147 of the Income Tax Act, 1961.

2. Although, this appeal filed by the assessee, for Assessment Year 2015-16, contains multiple ground of appeals. However, at the time of hearing we have



carefully perused all the grounds raised by the assessee and noted that solitary grievance of the assessee is that the learned Commissioner of Income Tax (Appeals) and Income Tax Officer has erred in passing the order by confirming the addition of Rs. 61,00,086/- under Section 69A, as unexplained money.

3. The appeal filed by the assessee for Assessment Year 2015-16, is barred by limitation by 178 days. The assessee has moved a petition requesting the Bench to condone the delay. The Learned Counsel for the assessee explained the delay stating that assessee's primary details were registered on the income tax portal, that is, Mobile No. 9376752275 and E-mail id [manishodedra2017@gmail.com](mailto:manishodedra2017@gmail.com), however, it escaped from assessee's knowledge about the order passed by CIT(A). Further assessee's consultant did not have direct access to the order of CIT(A), as details of communication was received by assessee. After a significant period, when assessee shared his login credentials which was changed by assessee which was shared to assessee's consultant then assessee's consultant discovered the CIT(A) order. It was only then the assessee became aware of the order passed by CIT(A) and then assessee was advised to file an appeal before the Hon'ble ITAT. Therefore, Id.Counsel stated that delay is not intentional therefore, the delay should be condoned.

4. Learned DR on the other hand has strongly objected to the prayer for condonation of delay and submitted that the delay cannot be condoned on the mere plea of ignorance of Income Tax Laws.

5. We have heard both the parties on this preliminary issue. In the matter of condonation of delay in filing appeals beyond the limitation period, the courts are empowered to condone the delay, provided the litigant is able to demonstrate that there was sufficient cause in preferring appeal beyond the limitation period. The Courts have also held that the expression "sufficient cause should receive liberal



construction so as to advance substantial justice. Hence, the question of condonation of delay is a factual matter and the result would depend upon the facts of the case and the cause shown by the assessee for the delay. It has also been opined that generally delays in preferring appeals are required to be condoned in the interest of justice, where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In view of the foregoing, we are of the view that the assessee has shown sufficient cause for the delay in filing the appeals before the Tribunal. Therefore, we note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, We are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay.

6. The facts of the case which can be stated quite shortly are as follows: The return of income was filed by the assessee on 30<sup>th</sup> September, 2015, electronically declaring total income at Rs. 3,01,200/-. The returned income was processed u/s 143(1) of the Income tax Act, 1961. Later on, the assessee's case was selected for limited scrutiny through CASS. Accordingly, notice u/s 143(2) was issued on 04.08.2016 and duly served upon the assessee on 10.08.2016. Subsequently, a notice u/s 142(1) of the Act, for calling various information; was issued on 03.01.2017 and duly served upon the assessee. In response to above mentioned notices, the authorized representative of the assessee, attended the case on time to time and filed written submission/explanation as and when called for. The assessee has furnished the following details, before the assessing officer:

- (i) Bank book for Financial Year (F.Y.) 2014-15.
- (ii) In respect to source of cash deposited in the bank account the assessee has submitted "will" of father.



(iii) The assessee submitted Profit and loss account, balance sheet and personal capital account for F.Y. 2013-14 and 2014-15.

(iv) The assessee submitted Cash book for F.Y. 2013-14 and 2014-15.

(v) In respect to total turnover details for F.Y. 2014-15, the assessee furnished contract notes /bills etc.

6.1 However, assessing officer, rejected the above documents and evidences and explanations of the assessee and made addition of Rs. 61,00,086/-, under section 69A of the Act, as unexplained money.

7. Feeling aggrieved and dissatisfied with the order of the assessing officer dated 06.12.2017, the assessee has preferred the appeal before Id.CIT(A). The Id.CIT(A) observed that it is settled law that for proving genuine credits, the burden is upon the assessee to prove identity of the creditors, their creditworthiness and genuineness of the transactions in the matter. In the case on hand, the AO noted that the assessee failed to establish the identity of the creditors, their creditworthiness and genuineness of the transactions, as mere filing of confirmation did not discharge the onus that lay on the assessee, as the primary onus laid on the assessee to prove prima facie the identity of his creditors, the capacity of such creditors to advance the money and lastly the genuineness of the transactions and mere production of the confirmation letters before the Assessing Officer would not by itself prove that the loans had been obtained from those loan creditors or that they had credit-worthiness. Thus, the assessee had failed to prove the credit worthiness of the alleged lenders and had not discharged its burden of proving that the loans in question were genuine. The Id.CIT(A) noted that the assessee involved in share transaction business where the assessee made a bogus loss of Rs.61,00,086/- which was settled by depositing cash in the bank account and unsecured loan. The assessee's claim of loss is nothing but a



bogus loss. Accordingly, the addition of Rs. 61,00,086/- was confirmed by Id.CIT(A).

8. Aggrieved by the order of the learned CIT(A), the assessee is in further appeal before us.

9. Learned Counsel for the assessee vehemently, argued that during the assessment proceedings, the assessee had provided a proper explanation regarding the source of funds, which were not taken into consideration, by the assessing officer. The bank statements, affidavits, certificate of Sub -broker and ledger accounts submitted by the assessee, clearly established the nature of transactions. The assessing officer, has not properly understood the nature of the transactions. The assessee was working as a sub-share broker, handling trades for clients, and was not trading for personal profit. The loss happened because some clients did not pay, so it is wrong to treat the entire amount as unexplained income. These transactions were part of the assessee's regular business as a sub-broker, and the payments made to brokers can be verified through bank statements. In this case, the funds did not belong to the assessee but were transactions carried out for clients. Various court rulings have confirmed that only the commission earned from such transactions can be taxed, not the full amount. The department has not proven that the assessee personally owned or benefited from the money deposited in his bank account. The assessee provided to the assessing officer, enough documents and evidences such as, bank statements, affidavits, a SEBI certificate, ledger accounts of Angel Broking and Sunflower Broking, and bank statements of unsecured loans. These documents clearly showed that the assessee was only an intermediary and that the deposits in his bank account were for clients. The loan transactions of Rs. 13,25,000/- received from Smt. Mayaben Odedara and Mr. Vijaybhai Thanki, were genuine, as the assessee submitted loan confirmations, bank statements, and identity proofs to



prove that these loans were genuine. As per the law, once an assessee provides valid proof, it is the department's responsibility to disprove it with solid evidence. Therefore, learned Counsel contended that addition made by the assessing officer may be deleted.

10. On the other hand, learned DR for the revenue submitted that loss incurred by the assessee should not be allowed, as the assessee did not file the cogent evidence to support his contention. The evidences submitted by the assessee, such as profit and loss account, balance sheet, confirmations, bank statements should not be relied on, as the assessee is not a commission agent. The “Will” of the father is not written on stamp paper and it is not signed by the notary public. Therefore, loss incurred by the assessee, is not genuine and hence it should not be allowed.

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Coordinate Bench of ITAT-Rajkot, in the assessee`s own case, vide ITA No. 190/RJT/2019, for assessment year 2015–16, order dated 02.06.2020, has treated the assessee, as commission agent. Therefore, we do not agree with learned DR for the Revenue to the effect that assessee is not a commission agent. In fact, assessee is a commission agent, for that findings of the Coordinate Bench of ITAT-Rajkot, in the assessee`s own case(supra), is reproduced below:

“4. The assessee in the present case is an individual and engaged in the activity of water supply contractor, **commission agent etc.** The AO during the assessment proceedings found that the assessee has carried out the business of sale of option in securities (derivatives) where the transactions were completed without delivery of the shares and securities. The assessee has carried out the transaction in such business for a value of Rs. 17,03,16,845/- only but the assessee failed to get its account audited as well as furnished the tax auditor report under section 44AB of the Act. Accordingly, the AO found that the assessee has contravened the provisions of section 44AB of the Act,



which attracts the penalty under section 271B of the Act. Accordingly the AO sought clarification from the assessee.

5. The assessee during the assessment proceedings submitted that he has incurred a loss of Rs. 60,68,230/- out of such business of dealing in options(derivatives). However he did not include such loss in the income tax return as he filed belated return of income. The assessee also claimed that he was under the bona fides believe that the net income of sale and purchase of derivatives shall only be treated as turnover for the applicability of the provisions of section 44AB of the Act which was less than Rs. 1 crores. Accordingly the assessee failed to get the accounts audited and furnish the tax audit report. However, the AO disregarded the contention of the assessee by holding that the assessee has defaulted in complying of the provisions of section 44AB of the Act. Accordingly he levied the penalty of Rs. 1.5 lakhs on the assessee under section 271B of the Act.

6. Aggrieved assessee preferred an appeal to the learned CIT (A).

7. The assessee before the learned CIT (A) reiterated the contention as made before the AO during the penalty proceedings. But the learned CIT (A) disregarded the contention of the assessee by observing that the assessee failed to establish whether the net result of sale of option (derivatives) was not known and whether the net amount represents the turnover more than or less than of Rs. 1 crores. As per the learned CIT (A), the assessee has not furnished the figure of the net result of sale of option (derivatives) except the loss at Rs. 60,68,230/-. Thus the learned CIT (A) confirmed the order of the AO. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

8. The learned AR before us submitted that the net result of sale of option (derivatives) does not exceed Rs. 1 crores. As per the learned AR the net result should be seen whether it exceeds Rs. 1 crores or not in order to find out the applicability of the provisions of section 44 AB of the Act. Accordingly the learned AR claimed that there cannot be any penalty under section 271B of the Act, on account of not getting the accounts audited and furnishing the same as per the provisions of section 44 AB of the Act.

9. On the other and, the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the learned CIT (A) has admitted the contention of the assessee that in case of the business without delivery, the net result should be seen to apply the provisions of section 44AB of the Act. But the learned CIT (A) held that the assessee has not furnished any detail about the net result whether it exceeds Rs. 1 crore or not except the amount of loss of Rs. 60,68,230/- which does not represent the net result of the business of the assessee. Accordingly, the learned CIT (A) in the absence of sufficient information levied the penalty by confirming the order of the AO.



11. Now, the question arises to ascertain whether the net result of the business of the assessee exceeds Rs. 1 crores or not. Indeed the onus lies on the assessee. But it was possible to find out the net result from the details furnished by the assessee during the assessment proceedings. The assessee during the proceedings has furnished the following details:-

*“(i) Bank book for F.Y. 2014-15*

*(ii) In respect of cash deposited in the bank account the assessee has stated that "We have submitted the will ( which was received from Shri Punjabhai Karsanbhai*

*Odedara- Father ( after hs accidental death in April 2014 ( death certificate attached herewith]) as an in heritage. And the cash amount was step by step deposited in my bank*

*account which was received from his tizori."*

*(iii) Profit and loss account .balance sheet and personal capital account for F.Y. 2013 M*

*and 2014-15.*

*(iv) Cash book for F.Y. 2013-14 and 2014-15*

*(v) In respect (o total turnover details for F.Y. 2014-15 contract notes/bills."*

From the above, we note that the assessee has discharged his onus imposed upon him by furnishing the details as discussed above. As such the onus shifted upon the Revenue to find out from such business whether the net result was exceeding Rs 1 crores. But the learned CIT (A) has not done so despite having the requisite information available with him. Accordingly, we are of the view that the assessee in such a situation cannot be visited with the penalty on

account of not getting the accounts audited and furnishing the audit report as prescribed under the provisions of section 44 AB of the Act. Hence the ground of appeal of the assessee is allowed.

12. From the above order of the Tribunal in assessee`s own case, it is evidently proved that Tribunal has treated the assessee as a **commission agent** and did not consider the turnover belonging to the assessee and therefore deleted the penalty, under section 271B of the Act. Therefore, issue under consideration is covered in favour of assessee, by the order of the Tribunal (Supra).

13. We further note that in a similar case (Kishore Bhai P. Thummar vs. ITO, ITA No. 631/Rjt/2014), the ITAT Rajkot ruled that only the commission income from such transactions should be taxed.

14. We also note that the assessee is an Individual and regularly assessed to tax. The assessee is mainly engaged in the business of Share broking and Trading in



Share on behalf of the client and earning the **commission income**. During the year under consideration, the assessee has incurred huge loss by entering the transaction in his name on behalf of clients and due to non-recovery of the amount from client on account of which the assessee felt that it will be next to impossible for him to draw the books of account. The transactions undertaken were part of the assessee's regular business as a sub-broker, and the payments made to brokers can be verified through bank statements as well as ledgers of the brokers. Therefore, we find that loss incurred by the assessee is genuine loss. The assessee is engaged in a sub-brokering business. This claim is duly substantiated by the ledger copies of the Angel Broking Pvt. Ltd from assessee`s paper book page No. 11 to 23 and Sunflower Broking Pvt Ltd from assessee`s paper book page 24 to 39. Further, on perusal of the same, it is evident that the shares are purchased and sold by him on behalf of the client and the income derived by him is merely commission-based income. The assessing officer has ignored the fact that the assessee was working as a sub-share broker, handling trades for clients, and was not trading for personal profit. The bank statements, affidavits, certificate of Sub broker and ledger accounts submitted by the assessee clearly established the nature of transactions. The relevant documentation submitted by the assessee before the assessing officer are as follows:

- (i) Bank Statement evidencing all the transactions (from page 07 to 10)
- (ii) Angel Broking Pvt Ltd Ledger (from page 11 to 23)
- (iii) Sunflower Broking Pvt Ltd Ledger (from page 24 to 39)
- (iv) SEBI Certificate (from page 40 to 42)
- (v) Affidavit of the assessee (from page 43 to 45)

The cash deposited in the bank account is not the money receipts of assessee himself but the same was money of clients of the assessee who applied their fund through the assessee's account in option derivatives. We note that assessee has



only earned commission income from entering transactions on behalf of their clients. This nature of business is also already confirmed by the Honorable Income Tax Appellate Tribunal, Rajkot vide the Order passed dated 28.02.2020 for the ITA No. 190/RJT/2019 in assessee's own case (supra), wherein it is mentioned that *"The assessee in the present case is an Individual and engaged in the activity of water supply contractor, commission agent etc.* In assessee's own case the Tribunal has decided by stating that *"From the preceding discussion, we note that the learned CIT (A) has admitted the contention of the assessee that in case of the business without delivery, the net result should be seen to apply the provisions of section 44AB of the Act.* Therefore, considering the above decision, in assessee's own case (supra) there is no doubt challenging the nature of the business. Thus, we note that assessee is acting as the sub-broker and not undertaking the transactions in his own name. Therefore, based on these facts and circumstances, the addition made by the assessing officer may be deleted.

15. Moreover, we find that the addition made u/s. 69A of the Income Tax Act, 1961, in assessee's case does not stand valid. We reproduce the bare provision of the section 69A of the Act, which is as under:

*"69A. Unexplained money, etc. Where in any financial year the assessee is found to be the owner of any money bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."*

From the above section 69A of the Act, it is clear that the addition can be made under this section only, if assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article and the same was not recorded in the books of assessee. However, in the assessee's case the AO has made the addition of losses incurred by the assessee



making transaction of behalf of the clients. The addition made by the AO cannot be sustained, as the addition so made by AO, completely falls outside the scope of the section 69A of the Act. Based on these facts and circumstances, we delete the addition.

16. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on 28-10-2025.**

Sd/-

**(DINESH MOHAN SINHA)  
JUDICIAL MEMBER**

Sd/-

**(Dr. A. L. SAINI)  
ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 28/10/2025

**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