



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"  
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 574/RJT/2025  
(निर्धारण वर्ष / Assessment Year: 2007-08)**

Dhirajlal Nathubhai Bhut, Radhe Shyam, Nr. Panchayat, Kothariya, Rajkot(Gujarat)-360002	<b>Vs.</b>	The Income Tax Officer, Ward-1(1)(1), Rajkot(Gujarat)-360001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIBPB0539Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri Samir Bhuptani, AR  
Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR  
**Date of Hearing : 23/09/2025**  
**Date of Pronouncement : 31/10/2025**

**आदेश / O R D E R**

**Per, Dr. Arjun Lal Saini, A.M.:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2007-08, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Ahmedabad [in short "the Id. CIT(A)"], National Faceless Appeal Centre (in short "NFAC"), Delhi dated 25.11.2024, which in turn arises out of a penalty order passed by Assessing Officer u/s 271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 07.09.2015.

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

*"1. Ld. CIT(A) erred in law as well as on facts in passing the appellate order u/s. 250 r. w. s. 254 of the Income Tax Act, 1961 which is bad in law and without appropriate jurisdiction.*

*2. Ld. CIT(A) erred in law as well as on facts in not following the directions issued by Honorable Income Tax Appellate Tribunal and thereby exceeded the jurisdiction and also made contempt of Hon'ble ITAT.*



3. *Ld. CIT(A) erred in law as well as on facts in not considering the submission of the appellant and in not providing reasonable opportunity of being heard to the appellant.*

4. *Ld. CIT(A) erred in law as well as on facts in not adjudicating the grounds of appeal raised by the appellant in his appeal memo.*

5. *Ld. AO erred in law as well as on facts in initiating penalty on the name of Rajnish Bhut who was not the legal representative of the deceased appellant.*

6. *Ld. AO erred in law as well as on facts in levying the penalty of Rs. 70,000/- u/s: 271(1)(b) of the act.*

7. *The appellant craves for leave to add, alter or withdraw one or more grounds of appeal.”*

3. The appeal filed by the assessee is barred by limitation by 230 days. The assessee moved a petition for condonation of delay, requesting the Bench to condone the delay. The learned Counsel adverted my attention to the reasons for condonation of delay before this Tribunal and urged for a benign view and sought condonation of delay of 230 days in filing the appeal before the Tribunal. However, learned DR for the revenue opposed the prayer of the assessee for condonation of delay. A perusal of the reasons and sufficient cause explained by the ld. Counsel for the assessee, gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned in filing the appeal.

4. On merit, learned Counsel for the assessee argued that Ld. CIT(A) had adjudicated first penalty appeal of the assessee and then after remitted the quantum appeal, to file of the assessing officer for adjudication. The order of the Ld. CIT(A), then after was uploaded on the web portal. However, copy of the same was not received through email and since the assessee had already died and his e-mail account was not verified by his Tax Consultant, at all. This matter came to the knowledge of the ld. Counsel for the assessee, only when he verified the status of appeal from the perspective of amended provisions of



Section 251 of the Act and to make request to set-aside the matter to the file of the Assessing Officer. Besides, penalty under section 272(1) (b) of the Act was imposed on a dead person, which will not survive, as the representative of the dead person had already intimated to the assessing officer about the fact that assessee under consideration had died, despite of this fact, notices, of hearing were served on the dead person and order was also framed on the dead person. Therefore, penalty should be deleted.

5. On the other hand, Ld. DR for the Revenue, relied on the findings of the assessing officer.

6. I 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. I note that notices of hearing, during the penalty proceedings were served on the dead person, despite of the fact that legal representative of the deceased -assessee, had informed to the Department that the assessee had died. Therefore, notices served on the dead person is invalid in the eyes of law. I also note that penalty notices should have been issued on the legal heirs of the assessee, which the Assessing Officer has failed to do so, while imposing the penalty. Therefore, based on these facts and circumstances, I note that since the penalty has been imposed on the dead person without intimating about the initiation of penalty to the legal heir of the assessee and without bringing the legal heir on record, despite the fact that legal representative of the deceased assessee, had informed to the Department that the assessee had died. The Supreme Court, in a plethora of judgments, has taken the view that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the



State, seeking to recover the tax, cannot bring the citizen within the letter of the law, the citizen is free, however, apparently within the spirit of law the case might otherwise appear to be. The Supreme Court, in CST v. Modi Sugar Mills Ltd., AIR 1961 SC 1047, observed thus :

*"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."*

7. Therefore, considering the above facts and circumstances, I am of the view that revenue cannot recover the tax from the dead person and the dead person cannot be prosecuted and cannot be put into the jail/ imprisonment, or can not be keep in prison. Therefore, I, note that this penalty imposed by the assessing officer, does not have any leg to stand. Therefore, I delete the penalty.

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

**Order is pronounced in the open court on 31/10/2025**

Sd/-  
**(Dr. Arjun Lal Saini)**  
**लेखासदस्य/Accountant Member**

Rajkot

(True Copy)

**दिनांक/** Date: 31/10/2025

**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