

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "DB" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 529/SRT/2025
Assessment Year: 2008-2009**

Bachraj Chhotelal Mehta,
C-3, 3rd floor, Antwerp Park,
Apartment, Kansara Sheri,
Mahidharpura,
Surat-395003.
PAN NO. AFRPM 7809 R
Appellant

ITO Ward-2(3)(8),
619, Aayakar Bhavan, Majura
Gate,
Surat-395001.
Respondent

Assessee by : Mr. Jay Thakkar, CA
Revenue by : Mr. J.K. Chandnani, Sr. DR

Date of Hearing : 09/10/2025
Date of pronouncement : 30/10/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 22.05.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2008-09, raising following grounds:

1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex-parte, without considering the bonafide reasons and compelling circumstances that had precluded the appellant to participate in the appeal proceeding;



2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the additions made in exparte assessment order passed u/s 144, without considering the bonafide reasons and compelling circumstances that had precluded the appellant to participate in the assessment proceeding;

Additional grounds of appeal raised for the 1st time

3.0 On facts and circumstances of the case and in law, the assessment order passed u/s.144 r.w. Sec 147 is bad-in-law, since the assessment order including demand notice u/s 156 had been passed in name of a non-existent entity viz. 'M/s. Vitrag Enterprises' on disclosing the status as 'Firm' and disclosing the PAN number as 'No PAN';

4.0 On facts and circumstances of the case and in law, the notice issued u/s.148 is invalid, since had not been issued in name of the appellant (individual), however had been issued in name of a non-existent entity named 'M/s. Vitrag Enterprises' and disclosing the PA number as 'No PAN';

5.0 On facts and circumstances of the case and in law, Ld. AO erred in issuing the notice u/s.148 in absence of tangible material and reason to believe that income chargeable to tax of the appellant has escaped assessment, thereby the consequential reassessment order passed u/s.147 is bad-in-law;

6.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of entire (100%) alleged non-genuine purchase of traded goods (diamonds) of Rs.79,50,000/-;

7.0 Without prejudice to Ground no.6, an alternate prayer is made to estimate the suppressed profits on alleged non-genuine purchase of Rs.1,59,000/- (@2% of Rs.79,50,000/-).

2. At the very threshold, the Ld. Counsel for the assessee drew our attention to the delay of 640 days in the presentation of the present appeal, as noted by the Registry. The Ld. Counsel submitted that the delay was neither wilful nor deliberate, but



occasioned by unavoidable and distressing circumstances which rendered the assessee incapable of active participation in the proceedings. In support of such plea, the Ld. Counsel placed reliance upon the affidavit of the assessee, the material portions whereof are extracted hereunder for ready reference:

3.0 THAT, I could not participate in assessment and 1st appeal proceedings and could not furnish the relevant details and documents on record under the bonafide reasons and compelling circumstances beyond my control, stated as under :-

a) My earlier Chartered accountant had advised me that the return of income u/s 148 cannot be filed in my individual name and under my PAN, since the notice u/s 148 dated 12/03/2015 had not been issued in my name and under my PAN, however been issued in name of a non-existent entity named 'M/s. Vitrag Enterprises' on disclosing the PAN number as 'No PAN' and therefore, I could not attend the assessment proceeding.

Further, since the assessment order u/s 144 r.w.s 147 dated 30/10/2015 had not been passed in my name and under my PAN, however had been passed in name of a non-existent entity named 'M/s. Vitrag Enterprises' on disclosing the status as 'Firm' and disclosing the PAN number as 'No PAN', I could not attend the 1st appeal proceeding;

b) I was extremely busy and was in state of mental depression, since my younger brother Late Shri Jayesh Kumar Jain met a severe accident on 14/01/2023, thereby causing serious injuries on head, face, chest, abdomen, limbs, etc and went in coma and was hospitalised for substantial period of time from 15/01/2023 to 12/05/2023 (Hospital Medical records are enclosed). Thereafter, he was bed ridden and ultimately died on 17/01/2025 (copy of his death certificate is enclosed). The serious medical illness of my brother and his death had resulted in non-compliance during 1^a appeal proceeding;

c) My younger brother Late Shri Jayesh Kumar Jain was looking after my entire accounts and tax related matters and



due to his accident, medical illness and ultimate death, the Income tax matters could not be attended and such had resulted in non-compliance during the 1st appeal proceeding;

d) I had completely closed my business and permanently shifted my place of residence from Surat to Mumbai (Aadhar card disclosing the address at Mumbai is enclosed) and my non-presence in Surat had resulted in non-compliance during assessment and 1st appeal proceedings;

e) I was not served with the notices of hearing, since were served by affixture and thus, I could not furnish the relevant details and documents during course of assessment and appeal proceedings.

I declare that there is no wilful or deliberate attempt nor any gross negligence for non-furnishing the details and documents on record and my non-compliance had occurred under the bonafide reasons as stated herein above. I respectfully make a prayer before the Hon'ble ITAT to adopt a liberal approach and grant me a final opportunity to represent the case on legal issues and on merits.

2.1 It was further submitted that the impugned assessment and first appellate proceedings were completed *ex parte*, and that the assessee, having been prevented by sufficient cause, now seeks an opportunity of being heard on merits.

3. We have carefully considered the rival submissions and perused the record. The question which arises for determination is whether the delay of 640 days in the filing of the appeal deserves to be condoned in the peculiar facts and circumstances of the present case.

3.1 The law on condonation of delay is now well settled. It is a salutary principle, enunciated by the Hon'ble Supreme Court in



Collector, Land Acquisition v. Mst. Katiji & Ors. [(1987) 167 ITR 471 (SC)], that while construing the expression “sufficient cause” under section 5 of the Limitation Act, a liberal and justice-oriented approach ought to be adopted so as to advance the cause of substantial justice. The Hon’ble Court has observed that a litigant does not stand to benefit by lodging an appeal late and that refusal to condone delay may result in a meritorious matter being thrown out at the very threshold, thus defeating the cause of justice.

3.2 The same principle was reiterated in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123], where the Apex Court held that the length of delay is not material so long as the explanation offered is bona fide and not tainted with mala fides or gross negligence. The expression “sufficient cause” must receive a liberal construction to subserve the ends of justice.

3.3 Tested on the touchstone of these authoritative pronouncements, we are satisfied that the cause pleaded by the assessee is reasonable and genuine. The untimely accident, prolonged illness, and eventual demise of his brother—who was attending to the tax affairs of the assessee—coupled with his own mental distress and relocation to another city, constitute circumstances beyond the assessee’s control. The record does not suggest any deliberate inaction or conscious disregard of the process of law.



3.4 Accordingly, we are inclined to condone the delay in the filing of the present appeal. The delay of 640 days is, therefore, condoned and the appeal is admitted for adjudication on merits.

4. On perusal of the records, it is evident that the assessee remained *ex parte* before both the Assessing Officer and the Ld. CIT(A). The reasons for such non-representation, as elaborated in the affidavit, are borne out by the supporting medical records and attendant circumstances.

5. The Hon'ble Supreme Court in *ITO v. Lakhmani Mewal Das* [(1976) 103 ITR 437 (SC)] has held that when an assessee has been prevented by sufficient cause from appearing, the principles of natural justice require that he be afforded an effective opportunity of being heard.

6. In view of the foregoing, and in the interest of substantial justice, we deem it appropriate to set aside the order of the Ld. CIT(A) and restore the matter to his file with a direction to re-adjudicate the same *de novo*, after affording due opportunity of hearing to the assessee. The assessee shall also be at liberty to raise all legal and factual grounds, including any challenge to the validity of the assessment, before the first appellate authority.

7. The ground No. 1 of the appeal of the assessee is allowed and remaining grounds are rendered only academic.



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

Order pronounced by way display of result on notice board on 30/10/2025 under Rule 34(4) of ITAT Rules, 1963.

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Dated: 30/10/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Surat
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Surat