



आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट।
**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"
RAJKOT BENCH, RAJKOT**
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 407/RJT/2025
(निर्धारणवर्ष/Assessment Year: (2017-18))

Harunbhai Noormamd Jindani Kishan Chowk, Behind Bodyg, Jamnagar - 361001	Vs.	The Income Tax Officer, Ward-2(7), Jamnagar-Rajkot Highway, Jamnagar-361008
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ANXPJ4114C		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

Assessee by : Shri Vimal Desai, Ld. AR
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 02/09/2025
Date of Pronouncement : 17/11/2025

ORDER

Captioned appeal filed by the assessee, pertaining to Assessment Year 2017-18, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals), dated 20.09.2023, which in turn arises out of an order passed by the Assessing Officer u/s. 144 of the Act, on 11.12.2019.

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

"1. The Commissioner of Income Tax (Appeals) has erred on facts and in law in partly confirming addition of Rs.7,48,000/- being cash deposited in bank account treating as unexplained.

2. The Income Tax officer has erred on facts and in law in making addition of Rs.12,48,000/- by treating cash deposited in bank account as unexplained. The Commissioner of Income Tax (Appeals) has erred on facts and in laws in partly confirming the addition of Rs.7,48,000/-."

3. This appeal filed by the assessee is barred by limitation by 572 days. The assessee has moved a petition for condonation of delay, requesting the Bench to condone the



delay. Learned Counsel for the assessee, explained the reasons of delay, stating that assessee had given his case for appeal, to one tax consultant at Jamnagar through his friend's reference. The Tax Consultant has orally ensured assessee that he had good case on merits and Tax Consultant also stated that he would take all cares for my Income Tax Appeal. The assessee was not supposed to do anything except providing required supporting documents. However, the Tax Consultant has neither visited assessee's Income Tax portal nor made any submission or filed paper book and nor updated the assessee about passing of order by Id.CIT(A). Therefore, learned Counsel contended that assessee should not be penalised because of the mistake committed by the Advocate/ tax consultant, of the assessee, and hence, delay may be condoned in the interest of the Justice.

4. On the other hand, Ld. DR for the revenue, opposed the prayer for condonation of delay and submitted that mistake committed by the Advocate/ Tax consultant, should not be treated sufficient cause, hence the appeal should be dismissed, as the assessee failed to explain the sufficient cause.

5. I have heard both the parties on this preliminary issue. I 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. For that reliance is placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the



assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing.”

6. I note that the power to condone the delay is discretionary and the discretion must be judicially exercised. The Tribunal would be justified in refusing to admit a time-barred appeal, if there was no sufficient cause for not presenting the appeal within the limitation period. However, the words ‘**sufficient cause**’ should receive a liberal construction so as to advance substantial justice where no negligence nor inaction nor want of *bona fides* is imputable to the applicant. The ‘Sufficient cause for non-compliance’, must be demonstrated by the assessee. I find that mistake of the lawyer or accountant may be a good reason for condoning delay. Therefore, I 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, I am of the considered opinion that in the interest of justice, the delay deserves to be condoned. I, accordingly, condone the delay.

7. On merit, facts of the assessee’s case are as follows. In the assessee’s case, as per instructions issued by CBDT, in the form of SOP dated 21/02/2017, verification was carried out, in respect of the transactions of cash deposits made in bank account relating to demonetization period and it was found that the assessee has not filed return of income for assessment year (A.Y.) 2017-18. Therefore, a notice u/s 142(1) of the Act was issued on 21.12.2017, requesting the assessee to file the return of income, which was duly served to the assessee. In response to the notice the assessee had not made any compliance. Accordingly, the assessee’s case was selected for scrutiny, keeping in view the instruction issued as SOP for handling of cases related to substantial cash deposit during demonetization period dated 05/03/2019. Further, in order to appropriately



assess the income under verification, a letter u/s 133(6) of the Act 1961 dated 24/05/2019 was also issued to Commercial Co-operative Bank Ltd, Grain Market Branch and Department of Post, Indian Post, Jamnagar. The assessing officer noticed that as per the information available in AIMS module on ITBA, the captioned assessee had deposited cash amounting to Rs.10,48,000/-, during demonetization period in his bank account No. 001010100022173 of Rs.7,50,000/- with the Commercial Co-operative Bank Ltd., Grain Market Branch and in account no. 1623606655 of Rs.2,98,000/- with Post Office, Jamnagar. The information received under section 133(6) of the Income Tax Act, 1961 matches with the information already available in AIMS in ITBA Module. The following accounts have been found in the name of the assessee:

Sr. No.	Bank name	Account No
(1)	The Commercial Co-operative Bank Ltd., Grain Market Branch	001010100022173
(2)	Department of Post	1623606655

8. The assessee had failed to file his return of income for the year under consideration and the assessee did not submit reply before the assessing officer, therefore, assessing officer framed the assessment order under section 144 of the Act, and made addition in the hands of the assessee on account of cash deposited in banks of Rs. 12,48,000/-, and cash so deposited was treated as unexplained cash credit u/s 68 of the Act and taxed u/s 115BBE of the Act.

9. Further, on verification of the bank account statements, it was noticed by the assessing officer that assessee earned interest of Rs.3,508/- on saving bank account and of Rs.83,462/- from term deposit. Total amount of interest income earned by the assessee during the year under consideration was to the tune of Rs.86,970/- (Rs.3,508 + Rs.83,462), which was also added to the total income of the assessee.



10. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly deleted the addition. The learned CIT(A) had considered the statement of facts, of the assessee, wherein assessee has stated that he was engaged in business of selling milk. It was stated by the assessee, before Id.CIT(A) that details were filed by the assessee, before earlier assessing officer (AO) i.e. ITO Ward 3(5), Jamnagar but could not file the same before the new assessing officer (AO) i.e. ITO Ward 2(7) Jamnagar. The assessing officer failed to gather and take note of replies filed before ITO Ward 3(5), Jamnagar. The assessee had produced books of accounts for FY 2014-15, 2015-16 and 2016-17. Also filed cash ledger wherein sufficient cash was available. The assessee had filed letter dated 08/11/2022 of Manager, the Commercial Co-Operative Bank Ltd, Jamnagar wherein it has been stated that during the year 2016-17 total cash deposit is Rs.7,50,000/- which is between 14/11/2016 to 21/11/2016. Copy of the letter was filed, before learned CIT(A), which was also filed with assessing officer, ITO Ward 3(5), Jamnagar. Therefore, the cash deposit during the year is taken Rs. 10,48,000/- (7,50,000 + 2,98,000) only. The assessee has not given any proof of doing business of sale of milk. Thus, the contention that the cash deposits were out of sale proceeds remain unsubstantiated. However, Id.CIT(A) observed that various courts have given allowance for past savings and cash in hand. In view of the facts of the case, the Id.CIT(A) deleted the addition, on account of past savings of Rs.3,00,000/-. Therefore, the addition was restricted to Rs.7,48,000/- (Rs. 10,48,000-Rs.3,00,000).

11. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this Tribunal.

12. Shri Vimal Desai, Learned Counsel for the assessee, argued that during the assessment proceedings, the assessee has submitted the possible evidences before



the old Assessing Officer to prove the cash deposit in the bank account to the tune of Rs. 10,48,000/- during the demonetization period. However, total aggregate cash deposited by the assessee to the tune of Rs. 12,48,000/-, was disallowed by the assessing officer. The Ld. Counsel submitted that although the order was framed under Section 144 of the Act, by the assessing officer, however, the assessee had submitted all the possible evidences before the old assessing officer as well as, before the Ld. CIT(A). The assessee has produced cash book for A.Y. 2014-15, 2015-16 and 2016-17 to explain the source of cash deposit, where the sufficient cash was available. The Ld. Counsel further submitted that out of total cash deposit of Rs. 12,48,000/- and only 10,48,000/- was deposited in the demonetization period. The Ld. Counsel also submitted that the assessee is engaged in a small business i.e. sale of milk and in this kind of business (sale of milk) the customer pay him cash only and such amount of cash was deposited in the bank account. Therefore, the assessee had filed all the possible evidences before the lower authorities, however, the addition was not deleted by lower authorities.

13. Alternatively, Ld. Counsel for the assessee also submitted that considering the smallness of amount Rs. 7,48,000/-, the addition sustained by the learned CIT(A), a profit element should be added in the hands of the assessee.

14. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

15. 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 ld. CIT(A)



and other materials brought on record. I note that the assessee have claimed to deposit the money in the bank account out of past savings and out of opening cash balance in the cash book of the assessee. However, I find that assessee is not subject to audit, therefore, cash book submitted by the assessee, is self -servicing document, hence, cannot be relied. On the one hand, the assessee submitted that he is a very small businessman, selling Milk only, and did not file the return of income, on the other hand, the assessee is claiming that he is maintaining systematic books of accounts for the previous years and for the subsequent assessment years, therefore, the addition should be deleted, as the assessee has opening cash balance. This is entirely a cooked story and hence benefits should not be given to the assessee on account of opening cash balance in its cashbook, as the assessee, did not file the return of income and assessee, being a Milkwala, does not have necessary set up to run the accounts department, besides, how much Milk was sold by the assessee in the previous year, and in the assessment year under consideration, have not been submitted before the Bench.

16. I note that on account of past savings, the learned CIT(A) had already deleted the addition to the tune of Rs.3,00,000/-. However, up to some extent, I find that the assessee has explained the source of the cash deposit, by submitting some documents and evidences and the fact that the assessee is engaged in the business of sale of milk, therefore, such small assessee is not required to maintain the books of accounts. Hence, the alternative before me is to uphold the profit element, out of the cash deposited in the bank account, as the entire cash deposit in the bank account should not be treated profit of the assessee. Therefore, taking into account the peculiar facts and circumstances, I estimate 10% profit element in the cash so deposited, which was sustained by the learned CIT(A) during the demonetization period, which comes to Rs. 74,800/- (10% of Rs. 7,48,000/-). Therefore, I direct the Assessing Officer to make the addition in the hands of the assessee to the tune of Rs. 74,800/-.



17. Since the assessee had deposited the cash in the bank account out of own sources (sale of milk-business income), therefore, the assessee is not liable to pay tax under section 115BBE of the Act. Hence, I direct the Assessing Officer to tax Rs.74,800/-, by applying the normal rate of Income Tax. I also make it clear that considering the peculiar facts and circumstances and considering the smallness of the amount, the estimated addition of 10% has been made in the hands of the assessee, therefore, the instant adjudication shall not be treated as a precedent in the preceding assessment years and subsequent years.

18. In the result, the appeal filed by the assessee is partly allowed, in above terms.

Order is pronounced in the open court on 17/11/2025.

Sd/-
(DR. A.L. SAINI)
ACCOUNTANT MEMBER

राजकोट/Rajkot

दिनांक/ Date: 17/11/2025

True Copy

Copy of the order forwarded to:

- The assessee
- The Respondent
- CIT
- The CIT(A)
- DR, ITAT, RAJKOT
- Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot