

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1044/SRT/2024

Assessment Year: 2014-15

(Hybrid hearing)

Chimanbhai Bhikhabhai Patel S. No.3/2, Koliwad, Adajan Gam, Adajan, Surat-395 009	बनाम/ Vs.	Income Tax Officer , Ward-1(3)(6), Income-tax Office, Anavil Business Centre, Adajan Hazira Road, Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AFYPP 4446 E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Appellant by	Shri Sapnesh R. Sheth, Advocate
राजस्व की ओर से /Respondent by	Ms. Namita Patel, Sr. DR
सुनवाई की तारीख/Date of Hearing	28/08/2025
उद्घोषणा की तारीख/Date of Pronouncement	17/11/2025

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 14.12.2022 by the National Faceless Appeal Centre, Delhi/Commissioner of Income-tax(Appeals) [in short, 'Ld. CIT(A)'] for the assessment year (AY) 2014-15, 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 15.11.2018.

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

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in dismissing the appeal filed by assessee on the ground that appeal was filed belatedly although genuine reasons were given for condonation of delay.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals), NFAC has erred in confirming the

action of the Assessing Officer in reopening assessment by issuing notice u/s 148 of the I.T. Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of Assessing Officer in making best judgment assessment u/s 144 of the I.T Act, 1961 without providing reasonable opportunity of being heard.

4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax(Appeals), NFAC has erred in confirming the action of Assessing Office in making addition of Rs.37,76,500/- u/s 69 of Income tax Act, 1961 as unexplained income.

5. On the facts and circumstances of the case as well as law on the subject, even otherwise also the learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the action of the Assessing Office in not giving deduction towards indexed cost of acquisition and indexed cost of improvement while calculating income from long-term capital gain.

6. It is therefore prayed that the above additions made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.

7. 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 606 days. The assessee has filed an affidavit for condonation of delay in filing of appeal before this Tribunal. The assessee submitted that CIT(A) passed order on 14.12.2022 but did not supply the physical copy of the order. He was unaware regarding appellate order. The primary e-mail id and mobile number given in Form-35 was that of the previous tax consultant who did not inform the assessee about the appellate order. The assessee submitted that his mental condition severely deteriorated since 2016 and he has been suffering from hallucinations and undergoing medical treatment. Assessee filed copies of medical certificate and prescription of the consulting doctor. 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. The Ld. AR submitted that the assessee has a very strong case on merit because that AO has made double addition and the actual capital gain will be loss of Rs.11.14 lakhs. 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. She, however, stated that the Bench may decide 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 that 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. The appellant was also suffering from mental illness and was undergoing treatment. He has enclosed the medical certificates in support of his medical treatment. Considering all these facts, we find that the delay was no intentional and deliberate. The assessee was unaware of the appellate order due to which he was unable to file appeal before the Tribunal in time. Hence, there was reasonable and 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 assessee filed his return of income declaring total income of Rs.2,10,350/-. The case was reopened by issue of notice u/s 148 on 27.03.2018. The assessee did not file any return in response

to the notice u/s 148 of the Act. Subsequently, the AO issued notices u/s 142(1) and letter asking the assessee to file details pertaining to the assessment proceedings. But the assessee did not file any details. Therefore, order u/s.144 of the Act was passed on 15.11.2018 wherein total income of the assessee was determined at Rs.39,86,850/- by making addition of Rs.37,76,500/- u/s 69 of the Act. Aggrieved by the addition made by AO, the assessee filed appeal before the Ld. CIT(A). In appellate proceedings, in Form-35, it was mentioned that there was delay of 364 days in filing appeal. The CIT(A) relied on various decisions mentioned in para-5.7 to 5.10 of the appellate order and dismissed the appeal in *limine*.

7. Further aggrieved by the order of Ld. CIT(A), the assessee has filed present appeal before this Tribunal. The Ld. AR submitted the paper book containing various details including written submission before CIT(A), sale deed of agricultural land, Fom-7/12 of the land sold by assessee, valuation report of the agricultural land etc. The Ld. AR assailed the impugned order by contending that assessee could not represent his case before AO and the order being an *ex parte* order, stood vitiated on account of violation of principles of natural justice. The Ld. AR submitted that during the appellate proceedings, CIT(A) did not condone the delay; therefore, Ld. AR contended that one more opportunity should be given to the assessee to plead his case before the CIT(A).

8. On the other hand, Ld. Sr. DR for the Revenue submitted that assessee was negligent during the assessment; hence, appeal of the assessee should be dismissed. In case the delay is condoned, appropriate cost may be imposed on the assessee.

9. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the assessee has been negligent and non co-operative during the assessment proceedings. Consequently, AO had to complete the 'best judgement assessment' u/s.144 of the Act. Subsequently, the CIT(A) has dismissed the appeal by not condoning the delay of 364 days in filing appeal. The Ld. AR submitted that the appellant could not appear before the AO and subsequently, the CIT(A) also dismissed the appeal due to delay in filing the appeal before him. He submitted that the case of the appellant has not been decided on merit by any of the lower authorities and huge tax liability has been fastened on the appellant. He requested for one more opportunity should be allowed in the interest of justice and fair play. We find that appellant could not file appeal before the CIT(A) in stipulated time limit due to keeping away the assessment order by the previous tax consultant. The appellant does not stand to gain by not filing the appeal in time. It is well settled that principles of natural justice require that the affected party is granted sufficient opportunity of being heard to contest his case. Considering the totality of the facts discussed above, we condone the delay in filing of appeal before CIT(A) and restore the matter back to his file for fresh adjudication on merit subject

to the payment of cost of Rs.15,000/- (Rupees fifteen thousand only) by the assessee to the credit of the 'PM National Relief Fund' within one month from receipt of this order. Subject to the payment of above cost, the CIT(A) shall initiate the fresh appellate proceedings and pass a reasoned and speaking order after affording sufficient opportunity of being heard to the assessee. The assessee is also directed to furnish explanation and relevant details before the CIT(A) expeditiously by not seeking adjournment without valid reason. For statistical purposes, the appeal of the appellant is treated as allowed.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 17/11/2025 in the open court.

Sd/-
(SUCHITRA R KAMBLE)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत/Surat
दिनांक/ Date: 17/11/2025
Dkp Outsourcing Sr.P.S*

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

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 अधिकरण, सूरत/** DR, ITAT, SURAT
- **गार्ड फाईल/** Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत