

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No.183/SRT/2025**

**Assessment Year: (2011-12)**

**(Hybrid Hearing)**

Usman Vali Patel, A-14 ASSD Park, Near Khwaja Township, Bharuch - 392001	<b>Vs.</b>	ITO, Ward – 1(2), Bharuch
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AYKPP8165B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Krutarth Desai, AR
<b>Respondent by</b>	Shri Ajay Uke, Sr. DR
<b>Date of Hearing</b>	11/09/2025
<b>Date of Pronouncement</b>	03/11/2025

**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 06.02.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2011-12.

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

*"1. The learned Assessing Officer has erred in invoking the provision of Section 147 of the Act based on a sole ground of cash deposit in the bank account. The essential requirement of invoking section 147 of the act is not complied and therefore, reassessment deserves to be quashed and set aside.*

*2. The learned Assessing Officer has not complied with the mandatory requirements of section 143(2) and passed the order under section 143(3) r.w.s. 147 which is bad in law and therefore impugned order deserves to be quashed and set aside in the best interest of justice.*

*3. The learned Assessing Officer has erred in appropriation of factual matrix of the case and evidence on record and made addition u/s 69A of the Act which is bad in law,*

*4. The appellant craves for leave to add or amend or alter any of grounds of appeal.”*

3. The appeal filed by the assessee is barred by limitation by 318 days in terms of provisions of section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing the appeal of appeal before the Tribunal. In the affidavit, the assessee stated that he is not well educated to understand the e-proceedings or faceless assessment and appeal scheme. His tax consultant has given his own mobile number and e-mail Id on Income-tax portal, therefore, the assessee had not received any communication from department. He was unaware of such notices and could not comply with the notices as it was served through the registered e-mail Id of his tax consultant. Due to the mistake of his tax consultant, the present appeal is filed belatedly. He submitted that delay was neither deliberate nor negligence. The delay caused due to genuine and Bonafide reasons is required to be condoned in the interest of justice and equity. He relied upon various decision in cases of (i) Rafiq C.Munshilal, AIR 1981 SC 1400, (ii) N.Balakrishnan V. M. Krishnamurthy, (1998) 7 SCC 123, (iii) B. Mahdhuri Goud vs. B.Damodar Reddy, (2012) 12 SCC 693 and (iv) Emsons Organics Ltd. vs. DCIT, (2020) 113 taxmann.com 269 (Chd – Trib.). He also relied on the decision Hon’ble Supreme Court in case of Siva Industries and Holdings Ltd. vs. ACIT, 157 taxmann.com 416 (SC). He has prayed to condone the delay and admit the appeal for hearing on merit.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the Revenue submitted that assessee has failed to explain sufficient cause for the delay; hence, delay should not be condoned.

5. We have heard both the parties on this preliminary issue of delay in filing appeal. In the affidavit, it is submitted that Chartered Accountant has not communicated the assessee about fate of appeal due to which, the delay of 318 days has occurred in filing appeal before the Tribunal. We note that assessee was not negligent but due to lack of communication with the tax consultant, there was delay in filing the present appeal. He was unable to pursue his case and there was lack of guidance and assistance to the assessee with respect to the procedure and formalities of filing appeal before the Tribunal. Hence, the reasons given in the affidavit for condonation of delay are reasonable and the same would constitute sufficient cause for the delay in filing this appeal. We, therefore, condone the delay and admit the appeal for hearing.

6. Brief facts of the case are that the assessee had not filed his return of income for AY 2011-12. The Assessing Officer (in short, 'AO') observed that the assessee deposited cash of Rs.15,33,000/- in his bank account maintained with Bank of Baroda. The case was reopened by issuing notice u/s 148 of the Act on 27.03.2018 after getting prior approval of the PCIT-3, Vadodara. The assessee e-filed his return of income on 10.12.2018 in response to the notice u/s 148 of the Act and declaring total income at Nil. Various statutory notices and show

cause notice were issued to the assessee. In response, the assessee had not filed any submission/reply. The assessee filed 7/12, 8-A extract and copy of Talati from State Government, which was not accepted by the AO. He observed that assessee deposited total cash of Rs.15,33,000/- and Rs.7,50,000/- had been deposited on the same day. The assessee failed to prove the source of cash deposits and documentary evidence. Hence, he made addition of Rs.7,50,000/- u/s 69A of the Act on account of unexplained money and added to the total income. In absence of documentary evidence, assessee's agricultural income of Rs.4,10,500/- was also rejected by AO. He assessed the total income of Rs.7,50,500/- as against returned income Rs. Nil.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) issued four notices fixing the hearing on 13.01.2021, 22.05.2023, 20.12.2023 and 27.12.2023. The appellant has not effectively pursued the appellate proceedings and failed to respond to various notices issued by the CIT(A). The CIT(A) relied on the decisions in cases of (i) CIT vs. B.N. Bhattacharya, 118 ITR 461, (ii) M/s Chemipol vs. UOI, Central Excise Appeal No.32 of 2009, (iii) Nandramda Dwarkadas, AIR 1958 MP 260, (iv) Dr. P. Nalla Thampy vs. Shankar, [1984 (supp) SCC 63], (v) New India Assurance vs. Srinivasan, (2000) 3 SCC 242, (vi) Whirlpool of India Ltd. vs. DCIT, ITA No.2006/Del/2011, dated 19.12.2001, (vii) Chadha Finlease Ltd. vs. ACIT, ITA No.3013/Del/2011, dated 20.12.2011 and (viii) CIT vs. Gold Leaf Captial Corp. Ltd., ITA No.798 of 2009, dated 02.09.2011. He held that no details, documents

or submissions have been provided to come to any conclusion. He observed that the assessee had further jeopardized its case by not responding despite being given several opportunities. Therefore, he sustained the addition made by AO and dismissed the appeal.

8. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the appellant was not given adequate opportunity of hearing by the lower authorities. He further submitted that though the CIT(A) has issued 4 notices of hearing, the assessee remained non-compliant before the CIT(A) due to lack co-operation of his tax consultant. The Id. AR contended that assessee could not represent his case before CIT(A) and the order being an ex parte, stood vitiated on account of violation of principles of natural justice. The assessee could not appear before the CIT(A) due to circumstances beyond his control. Therefore, Id. AR contended that one more opportunity should be given to the assessee in the interests of justice to plead his case before the AO.

9. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the Revenue supported the order of lower authorities. He submitted that the assessee has been negligent and non-cooperative due to which the addition made by the AO was rightly confirmed by CIT(A). He, however, would not have any objection if the matter is restored to the file of AO with appropriate cost.

10. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the assessee has been totally non-cooperative to the statutory notices and the show cause notice issued to him by the AO and the CIT(A). It is further seen that assessee had not filed his original return of income of AY 2011-12, though there were cash deposit of Rs.15,33,000/- in his bank account with Bank of Baroda. He had also not filed the return in response to notice u/s 148 of the Act. We also find that the CIT(A) has also issued four notices as per the table in para 4 of the appellate order. The Id. AR requested that another opportunity may be granted to the assessee to submit all the required explanations and details and plead his case on merit. Considering the facts and circumstances of the case, we are of the view that the principles of natural justice would call for giving another opportunity of hearing to the assessee. Accordingly, we hold that the interests of justice would be met in case the AO re-examines the entire issue afresh subject to payment of cost of Rs.10,000/- (Rupees fifteen thousand only) by the assessee to the credit of the **“Prime Minister’s National Relief Fund”** within one month from receipt of this order. Subject to payment of above cost, we set aside the order of CIT(A) and restore the matter to the file of AO with a direction to pass de novo assessment order in accordance with law after granting adequate opportunity of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all the required details and explanations as needed by the AO by not seeking adjournment without valid reasons. With

these directions, the grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order is pronounced in accordance with Rule 34 of ITAT Rule, 1963 on 03/11/2025.

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

Surat

दिनांक/ Date: 03/11/2024

SAMANTA

**Copy of the Order forwarded to:**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat