

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.512/SRT/2024**

**Assessment Year: (2010-11)
(Hybrid hearing)**

Bansntilal Tarba 429/1023, Sundarnagar, Ahimsa Circle, Bhilwara, Rajasthan- 311 001	बनाम/ Vs.	Income Tax Officer, Ward-3(1)(2), Surat, Aaykar Bhavan, Majura Gate, Surat-395 001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: AFIPT 1037 P		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Appellant by	Shri Prakash Jhunjunwala, CA
राजस्व की ओर से/Respondent by	Shri Ravinder Sindhu, CIT-DR
सुनवाई की तारीख /Date of Hearing	23/07/2025
उद्घोषणा की तारीख /Date of Pronouncement	26/09/2025

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 24.01.2024 by the National Face Less Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short, 'CIT(A)'] for the assessment year (AY) 2010-11, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s. 144 r.w.s. 147 of the Act on 15.11.2017.

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

"1.0 On facts and circumstances of the case and in law, the Ld. CIT(A) erred in not admitting the appeal under the reason that there is a delay in filing of the 1st appeal;

2.0 On facts and circumstances of the case and in law, the Ld. CIT(A) erred in not condoning the delay in filing of the 1st appeal of 495 days and ought to have considered the reasonable cause and bona fide reasons that had resulted in filing of the 1st appeal;

3.0 On facts and circumstances of the case and in law, the Ld. CIT(A) ought to have deleted the levy of penalty u/s 271(1)(c) of Rs.24,05,63,853/- in respect of estimation of income made in assessment of Rs.77,86,80,706/- @ 25% of accommodation transactions;

*4.0 On facts and circumstances of the case and in law, the levy of penalty u/s 271(1)(c) is erroneous since the initiation of penalty, in the assessment order, had been made **"for furnishing inaccurate particulars of income"**, whereas the penalty has ultimately been levied on altogether different charge of **"concealment of income"**;*

*5.0 On facts and circumstances of the case and in law, the penalty levied u/s 271(1)(c) is bad in law since the notice u/s 274 had been issued in mechanical manner without intimating the specific charge of **"concealment of income"** or **"furnishing inaccurate particulars of income"**;*

6.0 The Ld. AO, before levying the penalty/s 271(1)(c) of Rs.24,05,63,853/- ought to have considered the bona fide explanation, existence of debatable issues and reasonable cause, being;

a) The disputed transactions are supported with documentary evidences being purchase bills, confirmations, bank statements, corresponding sale bills, stock register and other documents;

b) The entire receipts/payments had been made through banking channel by a/c payee cheques/RTGS;

c) The statement of 3rd parties recorded at back of the appellant is general in nature and copies of such statements had not been provided to the appellant for confrontation and also an opportunity of cross-examination had not been allowed to the appellant.

d) The Ld. AO having held the entire transactions or Rs.311.47 crores as undisclosed and non-genuine, accordingly ought to have estimated the real income @ 0.10% on such accommodation transactions.

The appellant craves leave to add, amend, alter, and/or withdraw any of the grounds of appeal at the time of hearing."

3. The appeal filed by the assessee is barred by limitation by 38 days. An application for condonation of the delay was filed, which is supported by an affidavit. It is stated by the assessee that the small delay occurred on account of shifting his place of residence situated at 429/1023, Sundarnagar, Ahimsa Circle, Bhilwara Rajasthan-31001 and due to non-receipt of penalty order at his new address he could not file appeal in time. Therefore, it is prayed by the assessee that delay of 38 days in filing appeal may be condoned.

3.1 After hearing both the parties, we note that delay in filing appeal by the appellant is not intentional and deliberate. In view of the same, the request for condonation of delay is allowed and the appeal is admitted for hearing.

4. Brief facts of the case are that as per the information received from DDIT(Inv.)-1, Surat, the assessee had deposited cash of Rs.3,11,47,22,283/- in his bank account with the Axis Bank Ltd. during FY 2009-10 relevant to AY 2010-11. The assessee filed return of income on 25.09.2010 declaring commission income of Rs.8,22,650/- but no turnover or sales has been shown by him even though transactions were made through banking channel. The AO reopened the case by treating Rs.3,11,44,22,823/- as escaped income and accordingly issued notice u/s 148 on 31.03.2017. The assessee did not file return of income in response to the notice u/s 148 of the Act. The AO issued notice u/s 133(6) to the Axis Bank Ltd., which furnished the bank statement where assessee had deposited cash of

Rs.3,11,47,22,823/-. Thereafter, the AO issued show cause notice which was not responded to. Hence, AO added the gross receipt of Rs.77,86,80,706/- to the total income of the assessee and also initiated penalty proceedings u/s 271(1)(c) of the Act. Aggrieved by the addition made by AO in his assessment order, assessee preferred appeal before CIT(A) on 06.11.2019, which was late by 693 days. The CIT(A) did not condone the delay and dismissed the appeal. Subsequently, the AO issued fresh notice u/s 271(1)(c) but the assessee did not attend the case nor furnished any reply. In view of the above facts, AO levied minimum penalty of Rs.24,05,63,853/- vide order u/s 271(1)(c) dated 30.05.2018. Aggrieved by the order of AO assessee filed appeal before CIT(A) which was late by 495 days. The CIT(A) issued various notices which is mentioned at para-5 of the appellate order. The assessee either did not comply with the notices and kept on requesting for adjournments. The CIT(A) observed that assessee was not willing to pursue the appeal. Therefore, the CIT(A) did not find any reasons to interfere with the order of AO. He also did not condone the delay in filing the appeal because the assessee failed to establish the sufficient cause. In the result, appeal of assessee was dismissed.

5. Aggrieved by the above order of the CIT(A), the appellant has preferred present appeal before the Tribunal. The Ld. AR, at the outset, submitted that the quantum appeal against the assessment order u/s 144 r.w.s 147 of the Act dated

15.11.2017, which has been dismissed by the CIT(A) by not condoning the delay in filing the appeal before him, has been restored back to the file of AO by this coordinate Bench of this Tribunal in ITA No.177/SRT/2024 dated 25.06.2024. The Ld. AR has filed copy of the order and requested that since the assessment is pending before the AO, the penalty order may also be restored to the file of AO. The Ld. CIT-DR did not raise any objection if the matter is restored back to the file of AO.

6. We have heard both the parties and perused the materials on record. Considering the facts that the additions in the quantum assessment is restored back to the file of AO, therefore, the penalty levied in ex-parte order u/s 271(1)(c) of the Act is also restored to the file of the AO for fresh consideration while passing the fresh assessment order in accordance with law after granting reasonable opportunity of being heard to the appellant. In the result, the ground of appeal raised in this appeal is allowed for statistical purposes.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
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 प्रतिलिपि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

// True Copy //

सहायक पंजीकार
आयकर अपीलीय आधिकरण, सूरत