

**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.599/SRT/2025**

**Assessment Year: (2018-19)**

**(Hybrid hearing)**

|   |            |                                  |
|---|------------|----------------------------------|
| Siddeshwar Sizer,<br>203, Maitri Building, Varachha<br>Road, SO, Surat - 395006 | <b>Vs.</b> | ITO,<br>Ward - 1(2)(1),<br>Surat |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAMFS6450Q</b>                           |            |                                  |
| <b>(अपीलार्थी/Appellant)</b>  |            | <b>(प्रत्यर्थी /Respondent)</b>  |

|                              |                       |
|------------------------------|-----------------------|
| <b>Appellant by</b>          | Shri Rasesh Shah, CA  |
| <b>Respondent by</b>         | Shri Ajay Uke, Sr. DR |
| <b>Date of Hearing</b>       | 10/09/2025            |
| <b>Date of Pronouncement</b> | 28/11/2025            |

**आदेश / O R D E R**

**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 31.01.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the assessment year (AY) 2018-19.

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

*"1. On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in passing ex-parte order without giving reasonable and sufficient opportunity of being heard.*

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in dismissing the appeal without passing speaking order.*

*3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in re-opening assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.*

*4. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in making the addition of Rs. 40,96,053/-u/s. 37 of the Act on account of alleged bogus purchases.*

*5. It is therefore prayed that the matter may be set aside to the file of learned CIT(A) or assessing officer or the order passed u/s. 147 r.w.s. 144 of the Act may please be quashed and/or above addition made by the assessing officer may please be deleted.*

*6. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. The appeal filed by the assessee is late by 419 days in terms of provisions of section 253(3) of the Act. The assessee has filed affidavit giving reasons for delay in filing appeal before this Tribunal. In the affidavit, the assessee submitted that the e-mail Id, i.e., ‘aamfs6450q@mbzalavadiaco.com’ was mentioned in Form 35 and the appellant opted ‘no’ for sending notices/communication. In clause 17 of Form 35, the assessee mentioned address ‘203, Maitri Building, Surat City, Varachha Road S.O, Surat, Gujarat – 395006’. Despite opted ‘no’ for sending notice through e-mail, appellate order was not served physically at the said address. It came to know about the impugned order when penalty order u/s 270A of the Act was received by it. Thereafter, the assessee logged into the ITD portal and downloaded the same. The assessee consulted Shri Rasesh Shah, CA who advised to file appeal before the Tribunal. The assessee submitted that there is no delay in filing appeal if the date of downloading the order is considered to be the date of the service. He submitted that the delay was not intentional and it was prevented by sufficient and reasonable cause for not filing the appeal in time. The learned Authorized Representative (Id. AR) of the assessee requested the delay may be condoned in

the interests of justice and the assessee may be given one more opportunity to plead its case on merit.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Tribunal may decide the matter as it thinks fit.

5. We have considered the reasons given by the Id. AR and perused the accompanying documents along with the affidavit. Though the appellant was not alert, the delay in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, the assessee was not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, delays in filling appeal are condoned in the interest of justice subject to payment of cost of Rs.10,000/- (Rupees ten thousand only) by the assessee to the credit of the **“Prime Minister’s National Relief Fund”** within one month from receipt of this order.

6. The facts of the case in brief are that assessee filed return of income on 04.08.2018, declaring total income of Rs.5,28,140/-. The case was re-opened by issue of notice u/s 148 dated 31.03.2022. In response, the assessee filed return declaring the same income. After considering replies of the assessee, the Assessing Officer (in short, ‘AO’) held that purchases amounting to Rs.40,96,053/- from SK Enterprises was fictitious purchase and added the same to the total income.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) issued 3 notices, which remained non-complied. Therefore, the CIT(A) observed that assessee is not serious in prosecuting the appeal. He, accordingly, dismissed the appeal of the appellant.

8. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The Id. AR submitted that assessee could not filed the details and reply due to non-receipt of the notices issued by the CIT(A). he requested that the appellant should be given one more opportunity to plead its case on merit.

9. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of lower authorities. He, however, submitted that the Bench may decide the matter as it thinks fit.

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 notices issued to him by the AO and the CIT(A). The Id. AR submitted that the appellant did not receive any notice issued by the CIT(A) and therefore, he requested that another opportunity may be given to it. Having regard to the larger cause of substantive justice, we are of the considered view that the assessee should not be denied adjudication on merits merely for the technical or procedural lapses, particularly when the matter has not been examined by the CIT(A) at all on factual and legal aspects. The principles of natural justice require that every litigant be given a meaningful opportunity to present its case on merit before the competent authority. In view of the facts discussed above and in the interests of

justice, we deem it proper to set aside the order of CIT(A) and restored the issue back to AO for fresh assessment in accordance with law after affording sufficient and reasonable opportunity of hearing to the assessee. The assessee is directed to be more vigilant and diligent and to furnish all the 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 the assessee is allowed for statistical purposes.

Orders are pronounced under provision of Rule 34 of ITAT Rules, 1963 on 28/11/2025.

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

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

Surat

दिनांक/ Date: 28/11/2025

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat