

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA Nos.451 & 452/SRT/2025**

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

Jaya Rinkubhai Bandukwala 1/611,Dhatigara Street, Timaliyawad, Manpura, Surat-395 001	बनाम/ Vs.	Income Tax Officer, Ward -3(3)(1), Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BBFPB 1989 N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Appellant by	Shri Hiren R.Vepari, CA
राजस्व की ओर से /Respondent by	Shri Abhishek Gautam, Sr. DR
सुनवाई की तारीख/Date of Hearing	23/09/2025
उद्घोषणा की तारीख/Date of Pronouncement	03/12/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') both dated 11.03.2025 by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the assessment year (AY) 2018-19. One appeal is against quantum assessment and other is against penalty levied under section 272A(1)(d) of the Act on 25.08.2023. With consent of the parties, the appeals were heard together and a common order is passed for the sake of convenience and brevity. The quantum

appeal in ITA No.451/SRT/2025 is treated as lead case. The assessee has raised the following grounds of appeal:-

“(I) Ex-parte order:

- (1) The Ld. CIT(A) was not justified in passing the ex parte order.*
- (2) The appellant deserves one opportunity for natural justice and given the circumstances.*

(II) Merits:

(3) The learned CIT(A) was not justified in confirming the addition of entire sales consideration of Rs.61,00,000/- as short term capital gains particularly when the appellant had not earned any such amount.

(4) With no consideration evidently received whatsoever by the appellant, there was no justification in confirming the addition.

(5) Without prejudice to the above, share of the appellant in the property was only 1/6th.

(6) Without prejudice to the above, even if the capital gains were to be assessed in the hands of appellant,

a. Share of the appellant in the property was only 1/6th.

b. The capital gains was long term in nature.

c. The appellant ought to have been granted indexed cost of acquisition.

(III) Miscellaneous:

(1) All the above grounds and sub grounds are prejudiced to one another.

(2) The appellant craves leave to add, alter or vary any of the grounds of appeal.”

2. The grounds of appeal raised by the assessee in ITA No. 452/SRT/2025 are as under:

(I) Ex-parte order:

- (1) The learned CIT(a) was not justified in passing the ex-parte order.*

(2) The appellant deserves one opportunity for natural justice and given the circumstances.

(II) Merits:

(1) The learned CIT(A) was not justified in confirming penalty/s 272A(1)(d) of Rs.30,000 when the appellant was prevented by reasonable cause.

(2) In any case, non-appearance has not come in the way of assessment of the case.

(III) Miscellaneous:

(1) All the above grounds and sub-grounds are prejudiced to one another.

(2) The appellant craves leave to add, alter or vary any of the grounds of appeal.”

ITA No.451/SRT/2025

3. During the course of hearing, appellant filed an application dated 20.09.2025, seeking admission of additional evidence in the case assessee for AY 2018-19. This additional evidence includes copy of purchase deed dated 14.12.2004 and copy of sale deed dated 22.12.2017.

3.1 The appellant submitted that in her case addition of entire sale consideration was made without appreciating that her share was only 7.14% in the said property and that in her sister's case (Ms. Jyoti Dipak Bandukwala), who is also the co-owner of the property, assessment was finalized after considering her share of 7.14% in the sale of property and deducting indexed cost of acquisition. The appellant submitted that the additional evidence being germane and relevant to the matter in hand may be admitted under Rule 29.

The appellant has submitted that aforementioned evidences go to the root of the matter and is essential for proper adjudication of the issue in dispute.

4. The Ld. Sr. DR for the revenue opposed the admission of additional evidence, stating that sufficient opportunity had been granted during assessment and appellate proceedings.

5. We have considered the contentions of both the parties and perused the material on record. The assessee submitted that non filing earlier was due to lack of communication from her previous counsel and circumstances beyond her control. These documents are foundational and go to the root of the assessment, which was completed in absence of evidence. Rule 29 permits ITAT to admit additional evidence for any substantial cause. The intention behind the Rule is that substantial justice should be done and the interest of justice should be the overriding consideration. Hence, in the interest of justice and fair play, the additional evidence filed by the assessee under Rule 29 of the ITAT Rules is admitted.

6. Brief facts of the case are that the appellant did not file her return of income for AY 2018-19 u/s 139(1) or 139(4) of the Act. As per the information received by the AO, the appellant had entered into financial transaction in purchasing immovable property to the tune of Rs.61,00,000/- and also earned interest to the tune of Rs.3,941/- from Andhra Bank during the year under consideration. Therefore, the case of the appellant was reopened u/s 147 of the Act and notice u/s 148 of the Act was issued on 30.03.2022. However, the

appellant did not file any return of income in response thereto. Subsequently, notices u/s 142(1) of the Act were issued to the appellant, calling for details/documents on the relevant issue; however, appellant did not respond to the notices. Finally, show cause notice was issued to the appellant on 28.02.2023, in response to which, appellant filed her reply on 21.10.2023. In the aforesaid reply, appellant stated that she along with other co-owners had sold an inherited property for a sale consideration of Rs.61,00,000/- and that she received no consideration from the sale. However, the aforesaid reply of the appellant was not found tenable by the AO due to lack of supporting explanations/evidences. Therefore, the sale price of Rs.61,00,000/- was treated as short term capital gain and added to the total income of the appellant. Further, the AO noted that the appellant had earned interest to the tune of Rs.3,941/- from Andhra Bank during the year. Since the appellant failed to furnish any explanation regarding the aforesaid amount credited to her bank account, therefore, the AO treated the same as undisclosed interest income and added to her total income. Accordingly, assessment order was finalized u/s 147 r.w.s. 144 r.w.s. 144B of the Act on 16.03.2023 determining total income of the assessee at Rs.61,03,941/-.

7. Aggrieved by the order of the AO, assessee preferred appeal before the CIT(A). The CIT(A) issued several notices during the appellate proceedings, however, no compliance was made by the appellant to any of those notices.

Subsequently, the CIT(A) sustained the additions made by the AO and dismissed the appeal of the appellant.

8. Aggrieved by the order of CIT(A), appellant has filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that this is a case of very limited compliance before the AO and no compliance before the CIT(A). It is further submitted that during assessment proceedings, appellant did not receive any of the notices issued by the AO except the show cause notice. The appellant with the help of local counsel filed her reply to the aforesaid show cause notice, however, she discovered later on that inspite of her handing over the copy of registered sale deed and bank statement, her counsel/consultant did not upload these documents along with reply to show cause notice of the AO. The Ld. AR further stated that former counsel of the appellant submitted his own email address in Form 35 and neither responded to any of the notices issued by the CIT(A) nor informed about such notices to the appellant. Resultantly, no reply/response could be furnished by the appellant before the CIT(A) and order u/s 250 of the Act was passed *ex parte* by the CIT(A) confirming the additions made by the AO and dismissing the appeal of the appellant. Thereafter, the appellant appointed another Counsel and immediately filed the appeal before the Tribunal. The Ld. AR stated that the appellant come from middle class background and work as a primary teacher in a private school and she passed through a death like situation between 17.12.2023 to 15.03.2024. Regarding the merits of the case, the Ld. AR stated

that appellant's father along with the appellant's mother purchased a property for Rs.13,50,000/-. Subsequent to the death of appellant's father on 18.08.2016, name of appellant alongwith her seven other siblings were added in the property as legal heirs of her father. Subsequently, on 22.12.2017 appellant's mother sold this property to M/s. Shree Sai Enterprise for a consideration of Rs.61,00,000/- out of which amount of Rs.60,00,000/- was directly remitted to the Sangali Sahakari Bank Ltd. to whom the property was mortgaged for the purpose of business loan of Rs.55,00,000/- taken by the appellant's father. Thereafter, the mother of the appellant passed away on 15.12.2021 and the appellant came to know about such transaction after the receipt of income tax notice dated 04.04.2022.

9. The Ld. AR submitted that name of the appellant was only added in the property out of inheritance and for the convenience and that the appellant neither made any financial contribution towards the purchase of the property nor have received any consideration from the sale of such property. The Ld. AR also stated that case of Ms. Jyoti Dipak Bandukwala, who happened to be sibling and co-owner of the impugned property, was also reopened and assessment was finalized in her case adding 1/7th share in her father's 50% share. The appellant has filed an affidavit in this regard in the paper book submitted before this tribunal. Along with this, the Ld. AR has furnished copy of agreement for property purchased by the appellant's father, copy of registered sale deed in respect of property sold by the appellant's mother,

copy of notices issued and reply filed alongwith assessment order dated 21.12.2023 passed in the case of appellant's sibling cum co-owner (Jyoti Dipak Bandukwala), application for admission of additional evidence, etc. The Ld. AR has requested that in view of the afore stated facts/documents, appellant may be given one more chance because in her case instead of her share of 7.14% in the property, 100% of sale consideration had been added.

10. On the other hand, Ld. Sr-DR relied upon the orders passed by the lower authorities and requested to uphold the order of the CIT(A).

11. We have heard both sides and perused the materials available on record. It is evident that both the assessment proceedings and the appellate proceedings before the CIT(A) culminated in ex-parte orders, primarily due to non-compliance on the part of the assessee. The assessee has explained that she did not receive several statutory notices and that her former counsel failed to upload relevant documents or respond to notices issued by the CIT(A). The assessee has also submitted that she went through severe personal difficulties during the relevant period. These submissions have not been rebutted by the revenue. Hence, the assessment as well as the appellate order suffer from denial of proper opportunity of being heard.

11.1 The assessee has filed additional evidence, including the purchase deed, registered sale deed, the assessment order of a co-owner and bank statements. On examination, we find that these documents are primary material evidence which directly affect the determination of (i) the assessee's actual share in the property (ii) whether she received any part of the sale consideration (iii) the nature of capital gains, and (iv) the availability of indexed cost of acquisition. These issues could not have been adjudicated properly in the absence of these documents. In view of the above, the additional evidence has been admitted.

11.2 The assessee has also brought on record material that in the case of her sibling and co-owner, Ms. Jyoti Dipak Bandukwala, the Department has assessed only 7.14% of the sale consideration, accepted the transaction as giving rise to long-term capital gains and allowed indexed cost of acquisition. A perusal of that assessment order prima facie establishes that the Revenue itself has acknowledged the fractional ownership pattern. When co-owners of the same property are assessed on the same transaction, consistency demands that their cases be examined in a uniform manner unless differentiated by facts. The apparent inconsistency in the present case underscores the need for a fresh factual examination. Having regard to the ex-parte nature of proceedings at both stages, the relevance of additional evidence and the inconsistencies pointed out, we are of the considered view that the matter requires a de novo examination by the AO. In view of the above, we set aside

the order of the CIT(A) and restore the entire matter to the file of the AO with the direction to the AO shall pass a speaking and reasoned order, in accordance with law, after allowing sufficient and reasonable opportunity of being heard to the assessee. The assessee is also directed to submit all details and evidence as may be required by the AO. The grounds raised by the assessee are allowed for statistical purposes.

12. We clarify that we are not expressing any final view on the merits of the additions made by the AO. All issues are left open for fresh adjudication. The AO shall examine the matter independently and in accordance with law after providing adequate opportunity to the assessee.

13. In the result, appeal is allowed for statistical purposes.

ITA No.452/SRT/2025

14. Facts of the case have already been discussed above in the quantum appeal in ITA No.451/SRT/2025 and hence, the same are not repeated. The assessment order passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act on 16.03.2023 determining total income at Rs.61,03,941/-. The AO also initiated penalty proceedings u/s 272A(1)(d) of the Act for non-compliance of statutory notices dated 02.12.2022, 31.12.2023 and 13.01.2023 and issued penalty show cause notices on 21.02.2022 and 28.06.2023. However, the appellant failed to furnish any reply in response thereto. Therefore, the AO levied penalty of Rs.10,000/- on each default to the statutory notices and imposed penalty of Rs.30,000/-, u/s 272A(1)(d) of the Act.

15. Aggrieved by the penalty order of the AO, assessee preferred appeal before the CIT(A). The CIT(A) issued several notices during the appellate proceedings; however, no compliance was made by the appellant to any of those notices. In the absence of any written submission/explanation from the assessee, the CIT(A) dismissed the appeal of the appellant.

16. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted that during assessment proceedings, appellant did not receive any of the notices issued by the AO except the show cause notice. The appellant with the help of local counsel filed her reply to the aforesaid show cause notice. The Ld. AR further stated that former counsel of the appellant submitted his own email address in Form-35 but he neither responded to any of the notices issued by the CIT(A) nor informed about such notices to the appellant. Resultantly, no reply could be furnished by the appellant before the CIT(A) and order u/s 250 of the Act was passed *ex parte* by the CIT(A) confirming the additions made by the AO and dismissing the appeal of the appellant. Thereafter, the appellant appointed another Counsel and immediately filed the appeal before the Tribunal. The Ld. AR stated that the appellant come from middle class background and work as a primary teacher in a private school. She passed through a death like situation between 17.12.2023 to 15.03.2024. The appellant has filed an affidavit in this regard, before this tribunal. The Ld. AR further stated that section 273B of the Act provides that imposition of penalty is not automatic and if 'reasonable

cause' is established by the assessee, no penalty shall be imposed. In view of the above, Ld. AR requested to delete the penalty.

17. On the other hand, Ld. Sr.-DR relied on the orders of the lower authorities.

18. We have heard both the sides and perused the material placed on record. It is not in dispute that both the assessment as well as the first appellate proceedings were concluded *ex-parte* due to non-appearance of the assessee. The assessee has explained that she received only the final show-cause notice during assessment but was unaware of the other notices issued u/s 142(1) of the Act. She has further submitted that her previous counsel had mentioned his own email ID in Form-35 and had failed to respond to notices issued by the CIT(A), thereby depriving her of an opportunity to represent the case. She has also placed on record an affidavit explaining her adverse personal circumstances between 17.12.2023 and 15.03.2024. These explanations, coupled with her background as a primary school teacher with limited exposure to tax proceedings, do indicate that she was prevented by reasonable cause to some extent from complying with the notices. The revenue has not been able to controvert her explanation with cogent material. Therefore, the element of "reasonable cause" under section 273B of the Act, cannot be completely ignored.

19. Section 272A(1)(d) of the Act levies penalty for failure to comply with notices issued under section 142(1). However, section 273B of the Act carves

out an exception: no penalty shall be imposed if the assessee proves that there was “reasonable cause” for such failure. Judicial precedents consistently hold that penalty is not automatic and must be imposed only where the failure is wilful, deliberate and without cause. In the present case, the facts demonstrate, lack of communication by the previous counsel and adverse personal conditions during the material period. Thus, the assessee’s conduct does not fully reflect wilful disregard for statutory notices.

19.1 At the same time, after evaluating the entire matter, we are of the considered view that complete innocence cannot be attributed to the assessee. Despite non-receipt of earlier notices, the assessee admittedly received the final show-cause notice prior to assessment and was represented by a local counsel. Nothing prevented her from proactively contacting the department thereafter, especially when she was aware that proceedings were pending. Even during penalty proceedings, she did not file replies to the penalty show-cause notices dated 21.02.2023 and 28.06.2023. These events indicate some degree of laxity and failure to exercise due diligence. Therefore, while reasonable cause existed for some of the defaults, the assessee cannot escape responsibility altogether.

19.2 Section 272A(1)(d) of the Act provides for penalty of Rs.10,000/- per default. The AO has levied penalty for three defaults amounting to Rs.30,000/-. After examining the chronology of notices, submissions made, affidavit filed

and peculiar circumstances of the assessee, we restrict the penalty to Rs.10,000/- (Rupees ten thousand). The ground is partly allowed.

20. In the result, appeal of assessee is partly allowed.

21. In combined result, ITA No.451/SRT/2025 is allowed for statistical purposes whereas ITA No.452/SRT/2025 is partly allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 03/12/2025.

Sd/-
(SANJAY GARG)
न्यायिक सदस्य/JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 03/12/2025

Dkp Outsourcing Sr.P.S*

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

By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत