



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।  
**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"  
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA Nos. 696 & 697/RJT/2025  
(निर्धारणवर्ष/Assessment Year: (2018-19))

Harjivanbhai Makanbhai Barasara, At Jodhpar, Morbi, Dist:Rajkot-363642	<b>Vs.</b>	The ITO, Ward – 1, Aayakar Bhavan, Shakti Chamber, Morbi - 363641
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AJBPB4822B</b>		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri Darshit Ranpara, Ld. AR  
Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR  
Date of Hearing : 05/12/2025  
Date of Pronouncement : 08/12/2025

**आदेश / ORDER**

**Per, Dr. Arjun Lal Saini, A.M.:**

The present two appeals have been filed by the Assessee, against the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal, Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] dated 25.08.2025 and 26.08-2025 arising in the matter of assessment order passed u/s. 147 of the Income Tax Act, 1961 and penalty under section 271AAC(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-19.



2. The Id. Counsel for the assessee at the outset submitted that Id. CIT(A) did not adjudicate the issue on merit however dismissed the appeal of the assessee on account of delay. The delay in filing the appeal before the CIT(A) was two years and three months in quantum appeal in ITA No.696/RJT/2025 and in penalty appeal in ITA No.697/RJT/2025, there was delay for more than one year. The learned Counsel for the assessee, explains the reasons for delay before CIT(A) stating that advocate/CA appointed by the assessee, committed mistake and did not care to file the appeal before the CIT(A), on time, despite payment of fee by the assessee. The assessee submitted the required documents and evidences to his CA/advocate and the assessee, being an uneducated person, did not know about the income tax proceedings and he was fully dependent on his advocate/CA. After passing the assessment order, the assessee's advocate did not file the appeal despite of having all the documents and evidences, with him, therefore because of the mistake committed by CA/advocate of the assessee, the assessee should not be penalised and therefore said delay in filing the appeal before CIT(A) may be condoned and the matter may be restored to the file of the A.O. as the assessee wants to submit some more documents and evidences to prove his claim.

3. On the other hand, Id. D.R. for the Revenue submitted that because of the mistake of the chartered accountant/advocate of the assessee, the delay should not be condoned. It is the individual responsibility of the assessee to file the appeal on time before the CIT(A), however assessee has failed to do so, therefore, delay should not be condoned.

4. I have heard both the parties on this preliminary issue and noted that in the affidavit submitted by the assessee before the Id. CIT(A), the assessee has explained the sufficient cause and the reasons for such delay, however the Id.



CIT(A) did not condone the delay. I have gone through the reasons explained by the assessee before the Id. CIT(A) for condonation of delay and I find that the documents and evidences submitted before the Id. CIT(A) to condone the delay were convincing in nature. I also note that assessee should not be penalised because of the mistake committed by his advocate, and for that reliance is also placed on the decision of I.T.A.T., 'C' Bench, Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, order dated 18.04.2018], wherein under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

*"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing".*

5. Therefore, considering these facts and circumstances, I condone the delay in filing these appeals before the Id. CIT(A), in both the appeals, and admit these appeals for hearing.

6. On merit, at the outset itself, the Id. Counsel for the assessee assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an ex-parte order, stood vitiated on account of violation of principle of natural justice. The Ld. Counsel for the assessee submitted that notices were not issued to the assessee during the assessment proceeding, therefore, the assessee has submitted only part details before the assessing officer. Hence, the Ld. Counsel prayed the Bench that now the assessee wants to submit



some additional documents and evidences, therefore, matter may be restored back to the file of the assessing officer for fresh adjudication.

7. On the other hand, the Id. DR for the Revenue submitted that assessee was negligent in his approach and did not appear before the Lower Authorities, therefore a cost should be imposed on the assessee, on account of his non-compliance attitude.

8. I have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id. CIT(A) and other materials brought on record. I note that in the assessee's case under consideration, the assessment was carried out u/s 147 of the Act and the impugned order passed by the Id. CIT(A), is an ex parte order and non-speaking order, therefore, I do not wish to make any comments on the merits of the grounds raised by the assessee.

9. Considering the above facts, I note that assessee has not given sufficient opportunity of being heard and could not plead his case successfully before the Id. CIT(A). I note that the Id. CIT(A) did not discuss the assessee's case on merits based on the material available before him hence it is a violation of principle of natural justice. I note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. However, on account of non-compliance attitude of the assessee, I impose a cost of Rs. 6,000/- on the assessee which should be deposited in the Prime Minister National Relief Fund.



10. I note that appeal of the assessee, in ITA No.697/RJT/2025, pertains to penalty under section 271AAC(1) of the Act, since, I am remitting the quantum appeal of the assessee in ITA No.696/RJT/2025, back to the file of the assessing officer for fresh adjudication, therefore, penalty imposed by the assessing officer under section 271AAC(1) of the Act, does not have leg to stand, however, the assessing officer, may initiate fresh penalty proceedings, if any, in accordance with Law.

11. Therefore, without delving much deeper into the merits of the case, in the interest of justice, I restore the matter back to the file of Ld. Assessing officer for *de novo* adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, I deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits. For statistical purposes, both the appeals of the assessee are treated, as allowed.

12. In the result, both the appeals of the assessee are allowed for statistical purposes.

**Order is pronounced in the open court on 08/12/2025**

Sd/-  
**(Dr. Arjun Lal Saini)**  
लेखा सदस्य/Accountant Member

राजकोट/Rajkot

दिनांक/ Date: 08/12/2025

**Copy of the order forwarded to :**

1. The assessee
2. The Respondent



3. CIT
4. The CIT(A)
5. DR, ITAT, RAJKOT
6. Guard File

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot