

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.139/SRT/2025

Assessment Year: (2017-18)

(Hybrid hearing)

Mukeshkumar Balmukund Agarwal (HUF), 9A, Ratan Shyam Apartment, Nr. Panjrapole, Ghod Dod Road, Surat – 395007	Vs.	ITO, Ward – 1(3)(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AACHM3444A		
(Appellant)		(Respondent)

Appellant by	Shri Rasesh Shah, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	10/09/2025
Date of Pronouncement	03/12/2025

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 14.02.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment year (AY) 2017-18.

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 in circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of the assessing officer on addition of Rs. 27,00,000/- as unexplained money u/s, 69A of the I.T. Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in taxing the addition by taking the rate @77.25% by attracting S. 115BBE instead of normal tax rate

4. On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in taxing the income u/s 115BBE @ 77.25% in a retroactive manner by applying the duly substituted S. 115BBE inserted retrospectively instead of taxing it at 35.54% as per the old provisions of S. 115BBE.

5. It is therefore prayed that the addition made by the assessing officer and confirmed by CIT(A) may please be deleted.

6. Appellant craves leave to add, alter, amend 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 299 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., ‘vipulgroupvti@yahoo.com’ was mentioned in Form 35. The appellant did not check the e-mail regularly and was unaware about the appellate order. After he came to know about the appellate order, he downloaded it from ITD portal. Thereafter, the appellant consulted a new consultant who advised him to file appeal before the Tribunal. 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, delay in filling appeal is condoned in the interest of justice.

6. The facts of the case in brief are that the assessee filed his return of income on 16.02.2018, declaring total income of Rs.5,78,380/-. Various notices were u/s 143(2) and 142(1) of the Act were issued and served on the assessee. The Assessing Officer (in short, 'the AO') noticed that assessee had deposited cash of Rs.27,00,000/- in his bank account maintained with Bank of Baroda. The assessee was asked to explain the source of cash deposits along

with supporting documentary evidence. It was also seen from the bank statement that the assessee had not deposited any cash other than during the demonetization period. The AO issued a show cause notice on 29.11.2019 and requested to furnish relevant details in support of cash deposits. In response, the assessee filed his reply on 06.12.2019 and stated that there was cash balance of Rs.33,03,053/- as on 01.04.2016 and net cash income of Rs.3,82,255/- as on 09.11.2016. After considering replies of the assessee, the AO held that the assessee failed to satisfactorily explain the source of cash deposits in his bank account. Accordingly, he made addition of Rs.27,00,000/- u/s 69A of the Act and taxed it @60% u/s 115BBE of the Act.

7. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) issued 3 notices on 30.11.2021, 12.09.2023 and 07.02.2024, fixing the date of hearing on 13.12.2021, 20.09.2023 and 14.02.2024. But there was non-compliance on the part of the assessee. The appellant has not furnished any submission before the CIT(A). The CIT(A) referred to the decisions in cases of Estate of Late Tukojirao Holkar vs. CWT, 223 ITR 480 (MP), New Diwan Oil Mills vs. CIT, 296 ITR 495 (P & H), CIT vs. B.N. Bhattacharjee & Another, 118 ITR 461 (SC), wherein it was held that the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same. He further relied on the decision of Hon'ble Supreme

Court in case of CIT vs. Durga Prasad More, 82 ITR 540 (SC) and held that the onus of explaining the sources lie heavily on the assessee. The appellant has not bothered to furnish any evidence regarding the sources of the cash, which remained unexplained. Hence, he upheld the addition made by AO and dismissed the appeal of the appellant.

8. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee could not represent his case before the lower authorities and the order being ex parte order, stood vitiated on account of violation of principles of natural justice. The Id. AR submitted that during the appellate proceedings, the assessee could not plead his case before the CIT(A) due to circumstances beyond his control. Adequate opportunity of hearing was not given to the assessee; therefore, he requested that one more opportunity should be given to the assessee to plead his case before the CIT(A).

9. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue relied upon the orders of lower authorities. He submitted that there was utter negligence on the part of assessee. He, however, would have no objection if the matter is restored to the CIT(A).

10. We have heard both the parties and perused the material available on record. The AO made addition of Rs.27,00,000/- towards unexplained money u/s 69A of the Act. The CIT(A) has dismissed appeal because the appellant did not comply with the notices issued by the CIT(A). The Id. AR submitted that the non-compliance to the notices was not deliberate but due to circumstances beyond control of the appellant. The appellant is ready to submit all details in support of the grounds raised by him. He, therefore, requested that one more opportunity may be given to the appellant to plead his case on merit. Considering the facts 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. However, considering the not fully satisfactory explanation of the appellant for non-compliance before the lower authorities, we direct that this restoration shall be subject to payment of cost of Rs.10,000/- (Rupees ten thousand only) by the appellant. Accordingly, we hold that the interests of justice would be met in case the CIT(A) re-adjudicates the case on merit subject to above payment of Rs.10,000/- (Rupees ten thousand only) 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 remit the matter to the file of CIT(A) with direction to pass fresh 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 details and explanations as needed by the CIT(A) by not seeking adjournment without valid reasons. With this observation, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963 on 03/12/2025 in the open court.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 03/12/2024

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

Sd/-
(BIJAYANANDA PRUETH)
ACCOUNTANT MEMBER

By Order

// TREU COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat