

**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.170/SRT/2025**

**Assessment Year: 2017-18**

**(Physical hearing)**

Rameshbhai Popatbhai Dakhra Legal heir of Popatbhai Virabhai Dakhra Plot No.17,Ganesh Row House, Nr. Shyamdham Temple, Sarhana, Jakatnaka, Surat- 395 006	<b>बनाम/ Vs.</b>	Income Tax Officer Ward-2(3)(3), Surat, Aayakar Bhavan, Surat-395 001
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AKNPD 3920 H</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी /Respondent)</b>

निर्धारिती की ओर से /Appellant by	Shri Mehul Shah, CA
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	01/09/2025
उद्घोषणा की तारीख/Date of Pronouncement	21/11/2025

**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 03.10.2023 by the National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) [in short 'the CIT(A)'] for the assessment year (AY) 2017-18, which in turn arises out of assessment order passed by the Assessing Officer (in, short 'AO') u/s 144 of the Act on 28.12.2019.

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

*"1. On the facts and 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 making addition on issue other than the issue mentioned in the notice u/s 143(2) where the case of the assessee has been selected for limited scrutiny.*

4. *On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of Assessing Office in making addition of cash deposited during demonetization of Rs.12,00,000/-u/s 69A of the IT Act,1961.*

5. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Office in making addition of Rs.14,97,000/- by considering the exempt agriculture income as income from other sources.*

6. *It is therefore prayed that the addition made by Assessing Officer and confirmed by the learned CIT(A) may please be deleted.*

7. *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 barred by limitation by 411 days. An application for condonation of the delay was filed supported by an affidavit. In the aforesaid application, it is stated that in the Form-35, the email ID of the assessee's counsel 'mlbunhaincometax@gmail.com' was mentioned and in aforesaid Form-35, the assessee specifically opted 'No' for sending notices/communication on the said email ID. However, all the notices/letters were sent by the CIT(A) through email ID. The assessee stated that since he opted for physical mode of service of notices, therefore, the appellate order should have been served physically. Since, the assessee's Counsel did not check the email regularly and the appellate order was not served physically,

therefore, assessee did not come to know about the order of the CIT(A) (NFAC) being passed on 03.10.2023. It is also submitted that the assessee had expired on 05.05.2021 and there was no other responsible person for follow-up. The Ld. AR submitted that the delay was not deliberate and intentional. In the interest of justice, he requested to condone the delay. The Ld. Sr. DR for revenue did not raise objection to the condonation request of the assessee.

3.1 After hearing both the parties, we note that delay in filing appeal by the appellant was not deliberate and intentional. The appellant, anyway, does not seem to benefit from such delay. It is well settled that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

3.2 Hence, the request for condonation of delay is allowed and the appeal is admitted for hearing. However, to prevent such laxity in future, we direct the assessee to deposit a cost of Rs.5,000/- in the "Prime Minister's National Relief Fund" and submit the receipt of payment within 30 days from the date of receipt of this order to the AO.

4. Brief facts of the case are that the assessee filed the return of income for AY 2017-18 on 06.03.2018 declaring total income at Rs.25,200/- and agricultural income of Rs.14,97,000/-. The case of the assessee was selected for scrutiny under CASS. During assessment proceedings, notices u/s 143(2)

and u/s 142(1) of the Act were issued requesting the assessee to submit necessary details on the relevant issues, however, no reply was filed by the assessee in compliance of any of the notices. In the case of assessee, information was received regarding the deposit of cash during the period of demonetization. The AO obtained the copy of bank statement from the bank. On perusal of the same, it was seen that the cash deposits of Rs.9,50,000/- and Rs.2,50,000/- were made on 18.11.2016 and 23.12.2016 during the demonetization period. Since, assessee failed to file any details regarding the nature and source of aforementioned cash deposits of Rs.12,00,000/-, therefore, the same were treated as unexplained money u/s.69A of the Act and added to the total income of the assessee.

4.1 With regard to agricultural income, the AO observed that the assessee had not claimed any expenditure to earn the agricultural income of Rs.14,97,000/- declared in the ITR. The AO requested the assessee to submit the land holding records and copy of bills and vouchers for expenses incurred to earn the agriculture income of Rs.14,97,000/-. But, no details or documents were furnished by the assessee. Since no income can be generated without incurring expenditure, therefore, the AO concluded that the assessee had claimed bogus agriculture income and accordingly, treated the bogus agriculture income as income from other sources u/s 56 of the Act and added to the total income of the assessee. Accordingly, AO finalized the order u/s.144 of the Act on 28.12.2019 determining total income at Rs.27,22,200/-.

5. Aggrieved by the aforesaid assessment order dated 28.12.2019, assessee preferred appeal before CIT(A). During appellate proceedings, CIT(A) issued several notices to the assessee, however, no response was received from the assessee. Therefore, CIT(A) adjudicated the appeal of the assessee after considering the grounds of appeal, statement of facts and the assessment order and confirmed both the additions made by the AO *i.e.*, Rs.12,00,000/- on account of unexplained money u/s.69A of the Act and Rs.14,97,000/- on account of bogus agricultural income treated as income from other sources. The CIT(A), accordingly, dismissed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), assessee filed present appeal before the Tribunal. The Ld. AR of the assessee submitted copy of death certificate of assessee and copies of various case laws relied upon by the assessee. The Ld. AR contended that the CIT(A) erred in passing *ex parte* order and dismissing the appeal of the assessee without passing a speaking order. Ld. AR further submitted that all the hearing notices were sent through email inspite of opting to receive notices/letter through physical mode in Form- 35. Since, the assessee was not served with any physical notice of hearing, therefore, assessee could not attend the appellate proceedings before the CIT(A). The Ld. AR requested to give one more opportunity to the assessee by setting aside the *ex parte* order of the CIT(A), in the interest of justice.

7. On the other hand, Ld. Sr. DR for the revenue, relied upon the order of the lower authorities and requested to uphold the order of CIT(A). The Ld. Sr. DR contended that even the assessment order is an *ex parte* order and the assessee had not cooperated with the department both during the assessment and appellate proceedings.

8. We have heard both the parties and perused the materials on record carefully. As argued by the Ld. AR, in the statutory Form-35 the assessee had clearly mentioned 'not to send' notices and communications by email. However, perusal of the appellate orders clearly show that the notices were sent by email and not through physical mode. In absence of receipt of notices/letters, assessee could not plead his case successfully before the CIT(A). We note that it is settled law that principles of natural justice require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of the CIT(A) 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 file submission and supporting details by not taking adjournment without valid reason. Grounds are allowed for statistical purposes

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963  
on 21/11/2025 in the open court.

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 21/11/2025

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 अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, सूरत