



IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

DINESH MOHAN SINHA, JM

&

BIJAYANANDA PRUSETH, AM.

आयकरअपीलसं./ITA No.62/SRT/2025

निर्धारणवर्ष / Assessment Year: (2016-17)

(Hybrid Hearing)

Bhaveshkumar Rajaram Patel C/11/17, Sachin Udhyog Nagar Vanz, Sachin, Choryashi, Surat-394230	Vs.	Income Tax Officer Ward-2(3)(1), Aaykar Bhawan, Majura Gate Surat-395001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BFBPP7986M		
(Appellant)		(Respondent)

Appellant by : Shri P M Jagasheth, CA

Respondent by : Shri Ajay Uke. Sr. DR

Date of Hearing : 22 /07/2025

Date of Pronouncement : 15 /10/2025

आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee pertaining to Assessment Year 2016-17 penalty, is directed against order passed by Commissioner of Income Tax (Appeal), vide order dated 03/10/2024, which in turn arises out of an order passed by the Assessing Officer dated 24/11/2018 u/s 143(3) of the Income Tax Act, 1961.

GROUND OF APPEALS: -

1) On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in saying that the assessee has not mentioned sources of cash received from partnership firm anywhere, however capital account of partnership



firm given to Ld. A.O. specify each entry with date and narration of cash withdrawal from partnership firm.

2. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs. 14,10,000/- on account of alleged cash deposits made in the bank account remained unexplained treated as alleged unexplained cash credit u/s.68 of the Income Tax Act, 1961.

3. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition by not considered consultancy income declared in ITR as source of cash deposit in bank account.

4. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in not considering opening balance of cash in hand as source of cash deposit in bank account.

5. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in considering that the claim was not justifiable because of cash was not stated in previous years return, however assessee has filed ITR-3 and no such requirement is there in form nor any specified area in form to disclosed cash balance..

6. It is therefore prayed that the above penalty may please be deleted as learned members of the tribunal may deem it proper.

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

3. Facts of the Case

The assessee filed return of income for A.Y. 2016-17 on 31.03.2017 declaring total income of Rs.5,29,460/-. Further, the case was selected for limited scrutiny under CASS. Accordingly, notice u/s 143(2) was issued on 18.09.2017 and the same was duly served upon the assessee via email through ITBA e-assessment portal. In response to the notice issued from



time to time, Shri Mukesh Patel, CA & AR of the assessee vide communication dated 10.09.2018 stated that the assessee had deposited cash out of previous year savings, cash withdrawn from his partnership firm & bank accounts and from current year's consultancy income. AR of the assessee, vide the said communication also stated that the ledger account of the firm has been uploaded on e-assessment compliance portal. Further, on perusal of details submitted by the AR of the assessee, it was observed that the cash of Rs. 3,44,000/- was withdrawn from bank accounts on 30.03.2016 and 31.03.2016, i.e. after cash deposits made during the year. Further, with regard to source of cash deposits out of previous year's savings, no specific details was provided with regard to type of consultancy services provided by the assessee and to whom, such services were provided and the amount received for such consultancy services. With regard to source of cash deposits out of consultancy income, so specific details have been provided, viz, which type of consultancy services provided, to whom the services were provided, how much amount has been received etc. That the assessment was completed on 24.11.2018 with an addition in total income of Rs. 14,10,000/-

4. That the assessee filed an appeal against the order of assessment on dated 24.11.2018 before the Ld. CIT(A) which was dismissed by the CIT(A) on dated 03.10.2024

5. That the assessee field an appeal against the impugned order dated 03.10.2024 before this Tribunal.

6. That there is a delay in filing the appeal of 49 days before this Tribunal. An application for condonation of delay supported with affidavit was file. We have considered the submissions made by Ld. AR on behalf of assessee and in absence of any contrary fact or material on record, the assessee is



found to have a "sufficient cause" for delay in filing present appeal We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, It is also a settled position by Hon'ble Supreme Court in Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387 that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the provision of section 253(5) of the Act. We take a judicious view and condone the delay in filing this appeal. At the same time, as agreed by both sides and also having regard to the principle of natural justice and fair play. We deem it fit to give one more opportunity to the assessee so that the assessee can represent his case before AO for proper adjudication accordingly we remand this matter back to the file of AO for fresh adjudication after giving due opportunity of hearing to the assessee uninfluenced by his earlier order in any manner. The assessee is also directed to participate in the hearing as may be fixed by AO and do not seek unnecessary adjournment filing which the AO shall be at liberty to pass appropriate order in accordions with law.

7. In result the appeal of the assessee allowed for statical purpose.

**Order pronounced in the under proviso to rule 34 of ITAT rule, 1963 on
15/10/2025.**

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

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

//True Copy//



Surat

दिनांक/ Date: 15 / 10 / 2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat