

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH**  
**SHRI DINESH MOHAN SINHA, JM &**  
**BEFORE SHRI BIJAYANANDA PRUSETH, AM**  
**आयकर अपील सं./ITA No.578/SRT/2025**  
**Assessment Year: (2011-12)**  
**(Physical Hearing)**

Bhupatbhai Dhanjibhai Kothari, G-303, Bhaktidhara Residency Part – 2, Gothan Sayan Road, Surat - 394130	<b>Vs.</b>	ITO, Ward – 2(3)(1), Surat
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AFDPM3866Q</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri P. M. Jagasheth, CA
<b>Respondent by</b>	Shri Ajay Uke, Sr. DR
<b>Date of Hearing</b>	09/09/2025
<b>Date of Pronouncement</b>	28/11/2025

**आदेश / O R D E R**

**PER DINESH MOHAN SINHA, JM:**

This appeal filed by the assessee pertaining to assessment year (AY) 2011-12, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 27.03.2025, which in turn arises out of an penalty order passed by Assessing Officer (in short, ‘AO’) u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 27.03.2019.

2. Facts of the case in brief are that the assessee had not filed his return of income u/s 139(1) of the Act for the subject AY 2011-12. As per the information of ITS(CIB) details, the assessee had deposited cash of Rs.10,44,000/- into his saving bank account with Axis Bank Limited, Magob Branch, Surat. During the assessment proceedings, bank

statement of the assessee for the relevant period was obtained from the Bank. On perusal of bank statement, it was noticed that the total credit entries into the bank account was at Rs.12,89,725/-, out of which Rs.10,44,000/- were cash deposits and remaining Rs.2,45,725/- were undisclosed credit entries. The amount of Rs.10,44,000/- (cash deposit) and Rs.2,45,725/- (credit entries), totaling to Rs.12,89,725/- was treated as unexplained investment u/s 69 of the Act and added to his income. Later on, penalty proceedings u/s 271(1)(c) of the Act were also initiated for concealment of income. Accordingly, penalty notice u/s 271(1)(c) r.w.s. 274 of the Act was issued on 25.09.2018 and served upon the assessee. In response to the said notice, the assessee has neither furnished any submission nor submitted reply/explanation. The AO issued final show cause notice on 04.03.2019 and asked the assessee to submit his reply on or before 15.03.2019. Again, the assessee failed to make compliance with the said notice issued to him. The AO found that the assessee has nothing to say against imposition of penalty u/s 271(1)(c) of the Act. The addition of Rs.12,09,725/- is also deemed to represent concealed income in view of Explanation - 1 to section 271(1)(c) of the Act inserted with effect from 10.09.1966, which is at para 5.2 of the assessment order. Since the assessee has concealed income of Rs.12,89,725/- and tried to evade its taxable income and avoided the legitimate tax payable by it. Therefore, the AO levied penalty of Rs.2,48,147/-, which is 100% of tax sought to be evaded as against penalty leviable at 300%, which comes to Rs.7,44,441/-.

3. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appeal against the order passed u/s 271(1)(c) of the Act dated 27.03.2019, served on the same date, has been filed on 08.09.2023

as against the limitation date on 26.04.2019. Therefore, the delay of 1261 days in filing the appeal before the CIT(A). The assessee submitted its reply wherein it was stated that the assessee was not very educated and unaware of the income tax proceedings. When it came to the know about the penalty order u/s 271(1)(c), filed an appeal before the CIT(A) on the advice of the new consultant. The CIT(A) reiterated the section 249(3) of the Act and power of the CIT(A) to condone the delay in filing appeal, which is at para 5.1 of his order. The CIT(A) has placed reliance in cases of AC(CT) LTU, Kakinada & Ors. vs. M/s Glaxo Smith Kline Consumer Health Care Limited, 2020 (36) G.S.T.L 305, Majji Sannemma @Sanyasirao vs. Reddy Sridevi & Ors., CA No.7696 of 2021. The CIT(A) has not condoned the delay and dismissed the appeal.

4. Aggrieved by the order of CIT(A), the assessee filed appeal before us. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee could not pay attention to the communication of notices and orders received from the Department. There was no knowledge about the tax proceedings going on, therefore, the delay occurred. The Id. AR submitted that another opportunity of hearing may be granted to the assessee to represent his case before the CIT(A). The Id. AR submitted that the delay before the CIT(A) was neither intentional nor deliberate. The Id. AR submitted that the delay may be condoned and admit the appeal for hearing.

5. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the order of CIT(A) and opposed the prayer of the Id. AR.

6. We have heard both the parties and perused the materials available on record. The CIT(A) has refused to condone the delay of 1261 days and dismissed the appeal without discussing the appeal on merit. The assessee was not very educated and did not have sufficient knowledge about income tax matters. His earlier tax consultant has not communicated the tax proceeding and order of AO to the assessee, therefore, the assessee is unable to file appeal before CIT(A) within the stipulated time. The Id. AR of the assessee submitted that the delay was neither deliberate nor intentional. 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. The expression 'sufficient cause' provides u/s 253(5) of the Act is sufficient to enable the Tribunal to apply the law which subserves the ends of justice. In a number of cases, it has been held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay. We are of the view that the interests of justice would be met in case the CIT(A) re-adjudicate the case on merit subject to payment of cost of Rs.5,000/- (Rupees five thousand only) by the assessee to the credit of the **“Prime Minister’s National Relief Fund (PMNRF)”**. Therefore, we set aside the order of CIT(A) and remit the matter to the CIT(A) with a direction to pass fresh appellate order u/s 250 of the Act in accordance with law. The assessee is also directed to be more careful and to furnish all details and documents as needed by the CIT(A). For statistical purposes, the appeal of the assessee is allowed.

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

Order is pronounced on 28/11/2025 in the open court.

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

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

Surat

दिनांक/ Date: 28/11/2025

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat