



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

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

**आयकरअपील सं. /ITA No.217/RJT/2025**  
**निर्धारण वर्ष/Assessment Year : 2010-11**

<b>Vipul Arjanbhai Parmar</b> C/o. Sarda & Sarda (CA), Sakar, 1 <sup>st</sup> Floor, Dr. Radha-Krishnan Road, Opp. Rajkumar College, Rajkot, Gujarat - 360001	<b>बनाम/ Vs</b>	<b>Income Tax Officer</b> Ward – 1, Junagadh
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: DITPP9286B</b>		
<b>(अपीलार्थी/Assessee)</b>		<b>(प्रत्यर्थी/Respondent)</b>

निर्धारिती की ओर से/Assessee by : Shri Vimal Desai, Ld. AR  
राजस्वकी ओर से / Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/ **Date of Hearing** : **18/09/2025**  
घोषणा की तारीख/ **Date of Pronouncement** : **31/12/2025**

**आदेश/Order**

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

Captioned appeal filed by the assessee pertaining to Assessment Year 2010-11, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by National Faceless Appeal Centre (NFAC), Delhi/Commissioner of Income-tax (Appeals) (‘CIT(A)’), dated 16.12.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s. 143(3) r.w.s. 147 of the Act on 26.12.2017.



2. The appeal filed by the assessee is barred by limitation by 766 days. The assessee has moved a petition for condonation of delay, requesting Bench to condone the delay. The Ld.Counsel argued that tax consultant of the assessee, did not handle the matter of the assessee properly, therefore delay has resulted. The learned Counsel stated that said appeal of the assessee, was handled by tax consultant. A staff member of the tax consultant downloaded the order of ld.CIT(A) but failed to inform the tax consultant about the order. The same was lying in his drawer. Therefore, the tax consultant was not aware of such an order and could not take the remedial actions in the matter. Recently, the tax consultant came to know about the order passed in the assessee's case and immediately informed the assessee about the inadvertent omission by his office. The assessee and the tax consultant instantly contacted a firm of senior Chartered Accountants and sought their guidance in the matter.

3. The Ld. Counsel for the assessee further submitted that the assessee is a farmer and does not know about the Income Tax proceedings and he is entirely depending upon the advice of the Advocate. The Advocate of the assessee did not take care to file the appeal before the Tribunal, on time. Therefore, such delay has occurred, due to mistake of the advocate of the assessee, which may kindly be condoned. Therefore, in this process delay of 766 days, has resulted which may kindly be condoned.

4. On the other hand, Ld. DR for the Revenue opposed the prayer of the assessee for condonation of delay and stated that such huge delay should not be condoned, as the assessee has completely failed to explain the sufficient cause. The



mistake of the advocate should not be considered as a sufficient cause to condone the delay.

5. I have heard both the parties on this preliminary issue and I note that because of the mistake of Tax Consultant of the assessee, assessee should not be penalized. On professional advice, the Courts and Tribunals have consistently held that in the matter of condonation of delay, a pragmatic and liberal approach should be taken. The Hon'ble Gujarat High Court has also considered this aspect of condonation of delay in case of Gujarat State Fertilizers & Chemicals Ltd. (283 ITR 149) and held as follows:

*"The position in law is well settled that an assessee should be granted due relief where it is due without standing on technicalities and the revenue must bear the established legal position in mind while dealing with applications seeking condonation of delay. It is necessary that liberal approach is adopted in such a matter so as to ensure that substantive rights are not defeated on the basis of technicalities or limitation."*

6. 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."*



7. I note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well as the delay condonation, application, I am of the considered opinion that in the interest of justice, the delay deserves to be condoned. I, accordingly, condone the delay.

8. The grounds of appeal raised by the assessee, on merit, are as follows:

- “1. *The assessment order u/s. 143(3) r.w.s. 147 of the Act is bad in law.*
2. *The learned Assessing Officer has erred in law as well as on facts for making the addition of Rs. 5,00,000/- on account of unexplained money. The Id. CIT(A) has erred in law as well as on facts in confirming the same.”*

9. Brief facts quat the issue are that the assessee did not file his return of income for the assessment year (A.Y.) 2010-11. The department came to notice that during the relevant previous year, the assessee has given Rs. 15,00,000/- to Shri Ajitbhai/Shri Yogeshbhai for investment in shop/land in cash. As the assessee did not file his return of income, the source of cash of Rs. 15,00,000/- given to Shri Ajitbhai/Shri Yogeshbhai for investment in shop/land remain unexplained. In view of above facts, the case was reopened u/s 147 of the I.T. Act after recording the reasons regarding income escaping assessment within the meaning of Section 147 of the I.T. Act, 1961 and obtaining the approval of the Pr. Commissioner of Income tax-3, Rajkot for reopening of assessment u/s. 147 of the I.T. Act, 1961. The Notice u/s 148 of the Act dated 27.03.2017 was issued and duly served upon the assessee. In response to the notice, the assessee has submitted return of income declaring total income of Rs.Nil and agriculture income of Rs.4,30,700/- on 01.08.2017. Notice



was 143(2) & 142(1) of the Act dated 07.08.2017 were issued and duly served upon the assessee. The reasons for re-opening of the assessment were also provided to the assessee alongwith above referred notices.

10. In response to these notices, the assessee attended from time to time and filed written submissions. The assessee is agriculturist and derived income from agricultural activities. During the relevant previous year, the assessee has given Rs. 15,00,000/- to Shri Ajitbhai/Shri Yogeshbhai for investment in shop/land in cash. To explain the source of above cash of Rs.15,00,000/-, the assessee, vide, his reply dated nil received by the assessing officer on 22.11.2017, has stated that he is an agriculturist and having only agriculture income and did not maintain any books of account. The assessee has given the chart regarding agriculture income along with copy of sale bills of agriculture produce sold during the F.Ys.2008-09 & 2009-10, copy of vouchers of agriculture expenses for F.Y.2009-10, figure of drawing for house hold withdrawal and net income for the last three years are as under:

<i>Sr. No.</i>	<i>Year</i>	<i>Gross Income</i>	<i>Agriculture Expenses</i>	<i>Drawing</i>	<i>Net Income</i>
1	2007-08	9,85,150	3,24,530	88,000	5,72,620
2	2008-09	12,35,524	4,15,135	98,500	7,21,889
3	2009-10	6,46,050	2,15,350	1,10,500	3,20,200

The contention of the assessee is that he has given Rs.15,00,000/- in cash to Shri Ajitbhai/Yogeshbhai from accumulated cash from agriculture income of past years as well as during the year under consideration. However, it is not possible to keep the huge amount on hand as the banking facilities are not available in the market. It is also facts that the assessee is agriculturist and derived income from agricultural activities. The assessee has submitted that during the year under consideration, that he has not having any bank account so whatever amount they earned from agriculture



income which was saving as a cash on hand. The assessee also submitted that he has not made any investment in any real estate and also any other investment in last 5 years. Considering the agriculture income of the past years as well as year under consideration, facts and circumstance of the case, vide show cause notice dated 14.12.2017, the assessee was requested to show cause as to Rs.5,00,000/- out of the opening cash balance should not be disallowed.

11. In reply, the assessee has filed written submission dated 22.12.2017. The relevant parts of said reply is reproduced as under:

*“During the course of assessment proceeding. The assessee has produced the copy of Form No.7/12 and 84 of agricultural land with sales bills, vouchers in his prior submission dated: 22-11-2017. The assessee is an agriculturist and he has only agriculture income. The assessee's family having three agriculture land. The assessee's father Arjanbhai Punjabhai Parmar having agriculture land survey No. 41/1/1 At. Shepa, and Assessee's Uncle Meramanbhai Punjabhai Parmar having agriculture land Survey No.140/5/1 At. Shepa. Assessee's Uncle Jesingbhai Punjabhai Parmar having agriculture land Survey No.140/5/31 At. Shepa. The total Agriculture Land's area mentioned above comes at 3-71-30 Hectare sq. mtr. Since, they all live as joint family and the assessee is entrusted for managing all the financial and social responsibilities of the whole joint family, the total earnings and savings from the total agricultural land (i.e. 3-71-30 hectrs) is only managed and transacted by the assessee. It is further requested that neither the father of the assessee i.e. Sh. Arjanbhai Punjabhai Parmar nor the Uncle ie. Sh Meramanbhai Punjabhai Parmar and Uncle ie. Jesingbhai Punjabhai Parmar show separate agriculture income anywhere in India. Confirmation letters from Sh. Arjanbhai Punjabhai Parmar, Meramanbhai Punjabhai Parmar and Sh. Jesingbhai Punjabhai Parmar to the effect of the same is being submitted alongwith this submission. Confirmations latter attached here with*

*The assessee has given Rs. 15,00,000/- to Shri Ajitbhai/Shri Yogeshbhai during the year as per affidavit. The assessee's has given same amount from his saving cash on hand and also his joint family's agriculture income. All supporting documents submitted with earlier submission. The assessee has no any bank account during the year. So, the assessee keep huge amount on hand.*

*The assessee's is purely farmer and having family agriculture land since time to ancestral, they have only agriculture income. There were no any proof of taxable income, any income from other source or any undisclosed income regarding Rs.5,00,000/-, Department has accepted Rs. 10,00,000/- as agriculture income, means partly accepted so why no fully accepted in absence of any contradictory evidence.*

*It is also sincerely apologized that the assessee could not appear on 08/12/2017 in response to Your Honor's summons dated 01/12/2017 as there was voting for State Assembly Elections on 09/12/2017, the very next day and the assessee, inspite of his best efforts, could not defer his prior social commitments. Your honor, since having saved income in the form of cash from agriculture income and the mode of transaction do not violate any provision of the Income Tax Act, 1961, it is prayed to accept the submission of the assessee in his favour and allow the opening cash balance of Rs.5,00,000/- as valid and genuine and take positive action in the matter.”*



12. Considering the above reply of the assessee, the assessing officer considered it fit that after meeting the agriculture expenses and household expenses, other social meeting, the assessee can be able to have saving of Rs.9-10 lacs from the agriculture activities of past years as well as current year. Therefore, assessing officer made an addition of Rs.5,00,000/-, only, out of Rs.15,00,000/-

13. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the assessing officer. Therefore, the assessee is in appeal before this Tribunal.

14. 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. Shri Vimal Desai, Learned Counsel for the assessee, vehemently argued that assessee has shown pure agricultural income, and assessee does not have any source of income, other than the agricultural income. However, the assessing officer treated the agricultural income, as non-genuine to the extent of Rs.5,00,000/- out of Rs.15 Lakhs. The assessing officer ought to have treated the agricultural income at Rs.15 Lakhs, and no disallowance should have been made, based on the same facts and circumstances. The assessee, has submitted the required documents and evidences to prove the agricultural income before the lower authorities, however, despite of this, addition was made by the assessing officer. Therefore, the addition so made by the assessing officer may be deleted. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.



15. I have considered submissions of both the parties and noted that **the ‘tail’ cannot wag the ‘dog’**, meaning thereby, when the substantial proposed addition of Rs.10,00,000/- have been accepted by the assessing officer, out of total addition of Rs.15,00,000/- (which was to be made by the assessing officer, as per his show notice), then in that circumstances, small addition of Rs.5,00,000/-should not have been made by the assessing officer, particularly, when the assessee does not have any source of income except agricultural income, and as the assessing officer decided not to make addition of Rs. 10,00,000/-, in the hands of assessee, based on the assessee’s agricultural income. I note that the assessee, under consideration is an agriculturist, and it is not possible for him to run the full accounts department on his agricultural land and monitor his activities in an organized manner. The assessee has provided land holding and other details. It is to be appreciated that the assessee has explained the source and proved genuineness of the transaction and source of money, therefore, I am of the view that no addition deserves to be made in his hand.

16. As I have already noted that assessee is an agriculturist and exclusively engaged in agricultural activities and did not have any other source of income. The assessing officer also admitted that the source of income of the assessee is only agricultural income. This is evident from para 3 of the assessment order wherein the assessing officer observed as under:

*The assessee is agriculturist and derived income from agricultural activities"*

Therefore, there cannot be any assumption of any other income from any undisclosed sources. I also note that it is general phenomena that outcome of agricultural produce is dependent upon weather condition, natural calamities etc, and



in the assessment year, under consideration, there was more agricultural production as compared to previous years. The assessing officer should also demonstrate what is the other source of income to a farmer before partly treating his agriculture income as income from other source, if an assessee is only agriculturist and he has no other source of income then without referring those circumstances which could give rise to earning of income from other source, how, assessing officer treated such agriculture income as income from other sources. All these aspects are missing in the assessment order. Therefore, I am of the view that part addition of Rs.5,00,000/- made to the total income of the assessee is not sustainable.

17. Based on the above factual position, I am not inclined to accept the contention of the Assessing Officer in any manner and hence the addition so made is deleted. Hence, this appeal of the assessee is allowed.

18. In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 31 /12/2025.**

**Sd/-  
(Dr. A.L. SAINI)  
ACCOUNTANT MEMBER**

Rajkot  
Date: 31/12/2025

**(True Copy)**

By order

Assistant Registrar/Sr. PS/PS  
ITAT, Rajkot