

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1033/Ahd/2025
(Assessment Year: 2012-13)

Jitudan Ravatdan Gadhvi, Kalyanpura, Tal-Santalpur, Dist-Patan, Gujarat-385350	Vs.	Income Tax Officer, Ward-3, Patan
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[PAN No.APWPG8679N]

(Appellant)	..	(Respondent)
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Appellant by :	Shri Biren Shah, AR
Respondent by:	Shri Rajenkumar M Vasavda, Sr. DR

Date of Hearing	14.08.2025
Date of Pronouncement	16.09.2025

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 22.01.2025 passed for A.Y. 2012-13.

2. At the outset, we observe that the appeal is time barred by 39 days. The delay of 39 days is condoned on due consideration of facts of assessee’s case and owing to causing no perceptible prejudice to other side.
3. The assessee has raised the following grounds of appeal:

“1. In law and on the facts and in the circumstances of the case, the order u/s 250 of the Act passed by the Ld. CIT(A) is arbitrary, erroneous, contrary to the provisions of law.

2. In law and on the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in dismissing the appeal not adjudicating the merits of the case on ground of limitation when appellant has sufficient cause for not filing appeal within the time.

3. In law and on the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding addition on Rs. 4,19,093/- being 8% on contract receipt shown in Form 26AS of Rs. 52,38,658/-.

4. In law and on the facts and in the circumstances of the case, the Ld. CIT(A) has grossly erred in upholding addition on Rs. 12,44,754/- being cash deposit and Interest Income into bank accounts when no such addition is called for.

5. The appellant craves leave to add to alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

4. At the outset, the Counsel for the assessee submitted that he shall not be pressing for Ground No. 3 and accordingly, Ground No. 3 of assessee's appeal is dismissed as not pressed.

5. The brief facts relating to this ground of appeal are that the assessee failed to file his return of income for the Assessment Year (AY) 2012-13. The Assessing Officer observed that during the impugned assessment year, the assessee had deposited a total of ₹11,94,000/- in cash into his bank account with Axis Bank Ltd., Radhanpur Branch, Patan. On the basis of this information, the Assessing Officer initiated re-assessment proceedings under section 148 of the Income Tax Act (Act). Despite issuance of notice, the assessee did not file a return and neither did the assessee respond to multiple notices under section 142(1) of the Act. In view of the repeated non-compliance by the assessee and in the absence of any response or evidence, the AO proceeded to complete the assessment under section 144 of the Act on a best judgment basis. Accordingly, the entire amount deposits were treated as unexplained cash credit and added to the total income. Consequently, penalty proceedings under section 271(1)(c) were also initiated for concealment of income.

6. In appeal, Ld. CIT(A) dismissed the appeal of the assessee on account of delay of 477 days in filing of appeal before him. The Ld. CIT(A) made the following observations while dismissing the appeal of the assessee:

"7. On the facts and circumstances of the case, and in view of the position of law applicable on the given facts, I am satisfied that the appeal has not been presented within the period prescribed under section 249(2) of the Act, i.e. thirty days from the date of service of the notice of demand relating to the assessment order. I am also satisfied that the appellant has not been able to show any "sufficient cause" for not presenting the appeal within the said prescribed period, within the meaning of section 249(3) of the Act, read with section 5 of The Limitation Act. Accordingly, the appeal is not admitted for adjudication on merits.

8. *In the result, the present appeal is dismissed in limine."*

Ground No. 4:

7. Before us, the Counsel for the assessee submitted that the assessee belongs from a small village of Palanpur and he is neither aware regarding Income Tax proceedings and nor has he faced such proceedings at any earlier point in time. The assessee's registered address as per official records is situated at Kalyanpur Santalpur, Patan. However, due to present personal circumstances, relating to education of his child, the assessee was constrained to shift to Palanpur. Further, in the assessment proceedings, the notices were sent to psassociates@yahoo.com. However, the Counsel for the assessee submitted that the assessee did not own such email id and is also not aware about any such email. Accordingly, it was for these reasons that the assessee could not comply during the assessment proceedings and became aware of the passing of assessment order only when the Income Tax Department initiated recovery proceedings and a sum of Rs. 10,09,130/- was debited from the Axis Bank Account of the assessee in 2020. Further, since the period was coinciding with the Covid pandemic period, it was due to these reasons that there was a delay in filing of appeal by the assessee before CIT(A). However, CIT(A) without going into the merits of the case, summarily dismissed the appeal of the assessee on account of delay in filing of appeal before him.

8. On merits, the ld. counsel for the assessee submitted that the addition of ₹12,44,754/- made on account of cash deposits and bank interest was not

sustainable, since the deposits were not unexplained but were sourced from his business activity in the construction sector. The ld. counsel for the assessee submitted that that the contract receipts from the business were directly credited into the assessee's savings account with Axis Bank, Patan, and that the assessee paid the operational expenses in cash after making withdrawals from the same account. Any surplus cash which remained after meeting business expenses, like labour payments, was subsequently re-deposited by the assessee into the same bank account. The assessee presented a reconciliation before us showing that a total of ₹14,01,835/- was deposited in cash during the year, while total withdrawals from the same account amounted to ₹38,75,500/-, resulting in a net cash withdrawal of ₹24,73,665/- . The ld. counsel for the assessee submitted that that this excess cash was used for paying site labourers, with total labour expenses for the year being ₹45,40,718/-, of which ₹24,00,000/- was paid in cash. According to the ld. counsel for the assessee, this demonstrates that the assessee had availability of adequate funds to justify the redeposits. To substantiate his explanation, the assessee had also filed an application under Rule 46A before CIT(Appeals), seeking to admit additional evidence including the bank statement for FY 2011–12, Form 26AS for AY 2012–13, and the cash book for FY 2011–12. The assessee also sought to file a detailed date-wise explanation for each cash deposit made into the Axis Bank account, correlating every deposit with specific preceding cash withdrawals or accumulated cash balances from contract receipts, after adjusting for labour and work-related expenses. For example, deposits on various dates like ₹2,50,000/- on 16.09.2011, ₹1,18,000/- on 12.10.2011, and ₹2,20,000/- on 17.12.2011 were all explained as being sourced from earlier withdrawals from the same bank account, duly recorded and supported by cash flow records. However, CIT(Appeals) had summarily dismissed the appeal of the assessee on account of

delay in filing of appeal by the assessee without going into the merits of the assessee's case and also without taking the additional evidence on record.

9. We have heard the rival contentions and perused the material on record.

10. In response, Ld. DR placed reliance on the observations made by Assessing Officer and Ld. CIT(A) in their respective orders.

11. We observe that the addition of ₹12,44,754/- made by the Assessing Officer on account of alleged unexplained cash deposits and bank interest was primarily based on the absence of compliance by the assessee during the assessment proceedings, which concluded in a best judgment assessment under section 144 of the Act. However, before us, the assessee has furnished a detailed explanation substantiating the source of cash deposits in question. The Ld. counsel for the assessee has demonstrated before us that the assessee was engaged in the construction business, and the contract receipts were directly credited to his savings account with Axis Bank. The assessee had withdrawn substantial amounts from the same account to meet site-level operational expenses, including payment of labour charges. It is the assessee's case that any surplus cash, after incurring such expenses, was re-deposited into the same bank account, and hence the deposits were not unexplained in the present facts. The reconciliation submitted by the assessee in our considered view shows that while cash deposits during the year amounted to ₹14,01,835/-, cash withdrawals stood at ₹38,75,500/-, thereby resulting in a net withdrawal of ₹24,73,665/-. Furthermore, out of the total labour expenses of ₹45,40,718/- incurred during the year, ₹24,00,000/- was paid in cash. This in our view establishes the availability of sufficient funds with the assessee to justify the cash deposits made. In support of this contention, the assessee has also drawn our attention to

the bank statement, Form 26AS, and the cash book for the relevant year, along with a detailed date-wise correlation between cash withdrawals and subsequent deposits. The CIT(A) has dismissed the appeal of the assessee without considering the merits of the case or admitting the additional evidence filed under Rule 46A. In our view, this approach is not in consonance with the principles of natural justice, especially when the explanation provided is consistent with the flow of funds and business operations of the assessee. Considering the overall facts and circumstances of the case and in the interest of justice, we are of the view that the cash deposits are sufficiently explained through the assessee's own bank transactions and business activity. The source of the cash deposits stands reconciled and duly supported by records, and hence the addition made under section 68 of the Act is not sustainable. We accordingly set aside the addition of ₹12,44,754/- and allow the appeal of the assessee.

12. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on

16/09/2025

Sd/-

**(DR. BRR KUMAR)
VICE PRESIDENT**

Ahmedabad; Dated 16/09/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अन्वेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd/-

**(SIDDHARTH NAUTIYAL)
JUDICIAL MEMBER**

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad