

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

**BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER
AND**

SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2642/Ahd/2025

(निर्धारण वर्ष / Assessment Year : 2010-11)

Pareshkumar Arvindbhai Patel Soni Wali Khadki, Bhayali, Baroda, Gujarat- 391410	बनाम / Vs.	The Income Tax Officer Ward 1(2)(1), Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AUTPP2873M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Parimalsinh B. Parmar, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Rameshwar P Meena, SR.DR

Date of Hearing	25/02/2026
Date of Pronouncement	21/05/2026

ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi (hereinafter referred to as “CIT(A)”) dated 17.06.2025 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2010-11.

2. Brief facts relating to the case are that the assessee did not file return of income originally for the impugned assessment year

i.e. 2010-11. However, the AO was in possession of information that during the impugned year the assessee had sold urban agricultural land for a consideration of Rs.1.05 Crores. Therefore, proceedings u/s.147 of the Act were initiated and notice u/s.148 of the Act was issued to the assessee. In response to the same, the assessee filed his return of income declaring capital gain Nil after availing benefit of exemption u/s.54B of the Act. The assessment was completed by the AO on the returned income. Subsequently, the assessment order passed u/s.147 of the Act was held to be erroneous by order u/s.263 of the Act passed by the PCIT-1, Vadodara who directed the assessment to be framed after making necessary enquiries. Notices were issued to the assessee, in response to which, the assessee filed his submissions, which was duly considered by the AO. Thereafter, assessment was framed u/s.147 r.w.s. 263 of the Act by assessing the total income at Rs.64,47,347/-.

3. Against the order so passed by the AO, the assessee filed appeal before the Ld.CIT(A) who noted that the appeal was delayed for filing by 144 days and the assessee had not filed any application seeking condonation of delay. On the contrary, the assessee stated that there was no delay in filing of appeal in Form No.35 filed before the Ld.CIT(A). Accordingly, he dismissed the assessee's appeal on the ground of late filing. However, thereafter, he proceeded to decide the appeal on merits and issued several notices to the assessee which all remained uncomplied with. The Ld.CIT(A), therefore, in the absence of any assistance from the assessee confirmed the order of the AO.

4. Aggrieved by the same, the assessee has come up in appeal before us raising following grounds:

- “1. The Ld. CIT(A) has erred, both in law and on facts, in not condoning delay in filing the appeal.*
- 2. The Ld. CIT(A) has erred, both in law and on facts, in confirming the action of AO as to denial of claim of deduction of Rs.64,47,347/-under section 54B of the Act.*
- 3. Both, AO & CIT(A), have erred in passing the impugned orders without properly appreciating facts of the case, submissions of the assessee and documentary evidences available on record in the correct perspective. Such an act is in gross violation of the principles of natural justice and hence, the impugned order deserves to be quashed.*
- 4. The Ld. CIT(A) has erred in law and on facts of the case in confirming levy of interest u/s. 234A/B/C/D of the Act.*
- 5. The Ld. CIT(A) has erred in confirming action of initiation of penalty proceedings under section 271(1)(c) of the Act.*
- 6. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

5. The assessee has also raised following additional ground before us vide letter dated 24.02.2026:

“The appellant, through oversight, could not raise in the original appeal memo, the following legal ground of appeal and therefore, appellant now craves leave to raise this additional ground of appeal before this Hon'ble ITAT. This, being a legal ground, can be raised before Hon'ble the ITAT as per decision of Hon'ble Supreme Court in the case of "National Thermal Power - 229 ITR 383"

- 1. In the facts and circumstances of the case, the learned AO has erred in passing the Assessment Order in the name of a deceased person.*
Appellant craves leave to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of hearing of the appeal.”

6. Before adjudicating the appeal of the assessee on merits and before considering the admissibility of the additional ground raised by the assessee for adjudication before us, it is imperative

to adjudicate upon the order of the Ld. CIT(A) dismissing the assessee's appeal on account of delay in the filing of the appeal.

7. Before us, Ld. Counsel for the assessee has contended that the Ld.CIT(A) had wrongly noted the delay of 144 days in filing of the appeal because the said period included the Covid period during which all limitations expiring were extended by the Hon'ble Supreme Court vide decision dated 10.01.2022 passed in 'Cognizance for extension of limitation, In re – (2022) 441 ITR 722 (SC)'. He stated that including extension period so provided by Hon'ble Apex Court the delay in the filing of the appeal worked out to only 18 days. The contention of the Ld. Counsel for the assessee as above is stated at para 4 & 5 of the affidavit filed by the assessee before us seeking condonation of the delay as under:

"4. At this stage, attention of Hon'ble the ITAT is invited to the fact that owing to sudden out-break of Covid-19 pandemic in March, 2020, Hon'ble the Apex Court had extended the time limit for filing appeals / suits /petitions / applications etc. w.e.f. 15.03.2020 till further orders. Eventually, Hon'ble the Apex Court, vide decision dated 10.01.2022 passed in 'Cognizance for extension of Limitation, In re (2022) 441 ITR 722 (SC)', gave directions that in computing period of limitation for filing appeals, period 'from 15.03.2020 to 28.02.2022' shall stand excluded and in cases where limitation had expired during the aforesaid period, time limit of 90 days or actual balance time (whichever is higher) shall be available from 01.03.2022 for filing appeals, etc. Thus, time till 29.05.2022 (i.e. 90 days from 01.03.2022) was available as per decision of Hon'ble Apex Court.

5. In this case, limitation for filing appeal before CIT(A) expired on 15.01.2022 (30 days from 16.12.2021) whereas appeal came to be filed before Ld. CIT(A) in the present case on 16.06.2022. As per decision of Hon'ble Apex Court, time till 29.05.2022 was available. Thus, appeal was filed very shortly after the expiry of the time limit as per the decision of Hon'ble the Apex Court i.e. effective delay in filing the appeal works out to 18 days (i.e. from 30.05.2022 to 16.06.2022). Under such facts and circumstances, the assessee submits that delay in filing appeal was not deliberate and hence, such delay ought to have been condoned. At this stage, I further clarify that when the appeal was filed before CIT(A), I was under a bona-fide impression Covid limitation as per the decision of

Hon'ble the Apex Court was still into force and hence, I was of the view that such appeal was being filed before the CIT(A) in time. Hence, it was mentioned 'No' in Column No.14. However, at this stage, I realize (after understanding the correct legal position from the Advocate) that the covid limitation had expired very few days (i.e. 18 days) prior to filing of appeal before CIT(A) and hence, I ought to have mentioned 'Yes' in Column No.14. Thus, such error had crept in Form 35 on account of erroneous understanding of assessee as regards Covid limitation. In view of the peculiar facts of the present case, I earnestly prays Hon'ble the Bench to pardon such mistake and decide the appeal on merits in the larger interest of justice."

8. Further, he pleaded that delay effectively was a very small delay and had resulted on account of fact that the Consultant whom he had engaged, took time to decide whether the assessee should opt for filing appeal against the order of the ITAT confirming the order passed by the PCIT u/s.263 of the Act before the Hon'ble Gujarat High Court or the assessee should file appeal against the consequential order passed by the AO to the Ld. CIT(A). He has stated so in his affidavit filed before us and he stated that he had inadvertently mentioned no delay in Form No.35 of the appeal before the Ld. CIT(A).

9. Considering the averment so made by the assessee before us and noting the effective delay in filing of the appeal to be only 18 days, we find the assessee to have adduced sufficient cause for the delay and noting the smallness of the delay, we hold that the Ld. CIT(A) ought to have condoned the delay in filing of the appeal before him. We, accordingly, condone the delay in filing of the appeal before the Ld.CIT(A). Having said so and noting that the Ld. CIT(A) has also decided the appeal before him on merits, we now proceed to adjudicate the appeal before us on the grounds raised.

10. Taking up first the additional ground raised by the assessee, we have noted that the assessee has raised a legal ground challenging the validity of the assessment framed and noting the decision of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. (supra) holding that legal grounds can be raised at any stage, the additional ground so raised is admitted for adjudication.

11. The contention of the Ld. Counsel for the assessee challenging the validity of the assessment framed is that the assessee had expired during the pendency of the assessment proceedings in the second round before the AO, while the AO, however, had passed the order on a deceased assessee which Courts have consistently held to be an invalid order. In this regard, he drew our attention to the following decision of the Hon'ble High Courts:

- i. *Dhruvensh V. Patel vs. ACIT - SCA 11756 of 2020 (Guj);*
- ii. *Smt. Preethi V. v. ITO - 171 taxmann.com 100 (Karnataka);*
- iii. *Sandeep Kumar Shah vs. ITO - 157 taxmann.com 850 (Kol.);*
- iv. *Hiraben Babubhai Patel v. PCIT - ITA 700/Ahd/2019;*
- v. *Alamelu Verrapan vs. ITO - 95 taxmann.com 155 (Madras);*
- vi. *Savita Kapila vs. ACIT - 426 ITR 502 (Delhi);*
- vii. *Bhupendra B. Desai vs. ITO - 130 taxman.com 196 (Guj);*
- viii. *ITO vs. Bhupendra B. Desai - 130 taxman.com 40 (SC);*
- ix. *Devendra vs. ACIT-461 ITR 463 (Bom);*

12. With regard to the facts of the matter, he pointed out that while the assessment order in second round was passed on 16.12.2021, the assessee in question had passed away on 17.03.2021. Copy of death certificate of the assessee was filed before us.

13. Ld. DR was unable to controvert neither the factual contention of the assessee nor proposition of law relied upon by the Ld. Counsel for the assessee that any assessment framed on a deceased assessee was nullity in the eye of law. In view of the above, we have no hesitation in holding that the assessment framed in the present case on a dead person was not sustainable in law and deserves to be quashed. The assessment order passed, accordingly, is quashed. Additional ground of appeal raised by the assessee is, accordingly, allowed.

14. Since, we have quashed the assessment order, the other grounds raised on merits of the case need no adjudication, since, they are merely academic in nature.

15. In the result, the appeal filed by the assessee is allowed in above terms.

This Order pronounced on 21/05/2026

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Ahmedabad; Dated 21/05/2026
S. K. SINHA

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित / 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.

आदेशानुसार/ BY ORDER,

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