

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD "SMC" BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM]**

ITA No.2736/Ahd/2016  
Assessment Year: 2011-12

**Late Dharmendra Jagdishbhai Dubal,**

*By L/R Smt. Kirtiben D. Dubal,  
C-5, Komal Enclave,  
P.T. College Road,  
Nr. Shantivan Cross Roads,  
Paldi, Ahmedabad – 380 007.  
[PAN : AIDPD 8754 H].*

.....**Appellant**

**Vs.**

**Income Tax Officer,  
Ward – 9(3), Ahmedabad.**

.....**Respondent**

**Appearances by**

**S.N. Divatia** *for the appellant*  
**Roopchand** *for the respondent*

Date of concluding the hearing: 01.02.2018

Date of pronouncing the order: 02.02.2018

**O R D E R**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 14<sup>th</sup> October 2015, passed by the learned CIT(A), Ahmedabad, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12, on the following grounds :-

- “1.1 The order passed u/s.250 on 14.10.2015 for A.Y. 2011-12 by CIT(A)-5, Abad dismissing the appeal on ground of limitation by refusing to condone delay of five days is wholly illegal, unlawful and against the principles of natural justice.
- 1.2 The Ld. CTT(A) has grievously erred in law and or facts in dismissing the appeal on ground of limitation by refusing to condone delay of five days.
- 2.1 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have appreciated that there was sufficient cause from non-attendance or non-compliance to the alleged notices of hearing issued by him. It is submitted that due to serious and critical condition of the appellant during last 3-4 months prior to his death, there could not be any compliance to the notices. He was admitted to Civil Hospital for treatment and ultimately died on 15.10.2015.

2.2 *That in the facts and circumstances of the case as well as in law, the delay in filing the present appeal may be condoned in view of the sufficient cause as narrated in SOF herein above.*

3.1 *In any view of the matter, the Ld. CIT(A) has erred in not disposing off the appeal on merits of the case.*

*It is, therefore; prayed that the appeal dismissed by the CTT(A) may kindly be restored with directions to hear & dispose off on merits."*

2. The appeal is time barred by 304 days, but the assessee has moved a petition seeking condonation of delay on the ground that her husband Shri Dharmendra J. Dubal died after brief illness leaving behind her and two children and since there was no elder male person in the family who may look after the business and other matters and the assessee was totally ignorant about the business and legal affairs, there could not be any follow up to the pending matters. I have noted that the assessee was traversing through a difficult situation on account of the above facts. We have also noted that it was due to this difficult patch of time and the problems being faced by the assessee that the delay in filing of the appeal is stated to have been caused. Having considered this explanation and having heard the learned Departmental Representative, I am inclined to condone the delay. Accordingly, the delay is condoned.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The appeal before the CIT(A) was time barred by 5 days and the learned CIT(A) dismissed the appeal as the assessee has not made any request for condonation of delay along with the reasons for such delay either with the appeal memo or in appellate proceedings.

4. I have heard the rival submissions and perused the material on record. In all fairness to learned Departmental Representative, he did not seriously oppose the assessee's plea that the delay ought to have been condoned and the matter ought to have been decided on merits.

5. In my considered view, and in the light of the above discussions, the 5 days delay in filing of appeal should have been condoned by the learned CIT(A) and the matter ought to have been adjudicated on merits. I, accordingly, remit the matter to the file of the CIT(A) for adjudication on merits de novo.

6. In the result, the appeal is allowed for statistical purposes. Pronounced in the open Court on this 2<sup>nd</sup> day of February, 2018.

**Sd/-**  
**Pramod Kumar**  
(Accountant Member)

**Dated: Ahmedabad, the 2<sup>nd</sup> day of February, 2018.**

**PBN/\***

Copies to: (1) The appellant (2) The respondent  
(3) CIT (4) CIT(A)  
(5) DR (6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad