

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Ravish Sood, Judicial Member**

ITA No. 6249/Mum/2016
(Assessment Year: 2006-07)

Shri Ashok Jain 1303, Vastu Shilp Gamadia Colony Tardeo, Mumbai 400007	Vs.	ACIT, Central Circle-38 (Presently DCIT, CC-6(3) Air India Building Nariman Point Mumbai 400021 PAN – AAOPJ2690M
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Appellant

Respondent

Appellant by: Shri Harshal Doshi
Respondent by: Shri R.P. Meena

Date of Hearing: 19.03.2018
Date of Pronouncement: 25.05.2018

ORDER

Per G.S. Pannu, AM

This appeal has been filed by the assessee against the order of the CIT(A)-54, Mumbai dated 13.06.2016 for A.Y. 2006-07.

2. In this appeal the only grievance of the assessee is against the action of the AO in treating the short term capital gain of ₹44,26,537/- as business income.

3. Before proceeding further it may be noted that the appeal has been filed belatedly by 20 days. The assessee has sought condonation of delay and it has been averred in the affidavit dated 02.02.2017, a copy of which is on record, that the delay was on account of unintended reasons beyond the control of the assessee. It is averred that the concerned professional

who was to file the appeal lost sight of the date by inadvertence and work pressure and there was no wilful intention in not filing the appeal. The bonafides of the averments made in the affidavit has not been assailed before us and considering the ratio of the judgement of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katji & Others (167 ITR 471) the delay in filing the appeal was condoned. Accordingly rival counsels were heard on merits of the case.

4. Notably, the captioned appeal is arising from the assessment finalised by the AO under Section 143(3) r.w.s. 153A of the Income Tax Act (hereinafter "the Act") consequent to a search action on the assessee on 12.10.2011. In the impugned assessment the AO referred to the original assessment made by the AO under Section 143(3) of the Act dated 10.11.2008 and treating the short term capital gain of ₹44,26,537/- as business income. Assessee carried the matter in appeal before the CIT(A) who endorsed the action of the AO by noticing that in the assessment proceedings under Section 143(3) of the Act dated 10.11.2008, similar action of the AO has since been confirmed by the Tribunal in the appeal. Accordingly he dismissed the stand of the assessee.

5. Before us the learned A.R. fairly conceded that the position brought out by the learned CIT(A) continues to hold the field in as much as the order of the Tribunal affirming the assessment of short term capital gain as business income continues to prevail. In view of the above we hereby confirm the order of the CIT(A) and the assessee fails in this appeal.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 25th May, 2018.

Sd/-
(Ravish Sood)
Judicial Member

Sd/-
(G.S. Pannu)
Accountant Member

Mumbai, Dated: 25th May, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -54, Mumbai*
4. *The Pr. CIT, Central-3, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.