

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 769/Ahd/2017
(Assessment Year : 2013-14)

Shri Amirali Abbasali
Malaviya,
Para, Panjra Pole Road,
Botad – 364 710.

Vs. Income Tax Officer,
Ward-2(5),
Bhavnagar.

[PAN No. ACUPM 6881 B]

(Appellant)

..

(Respondent)

Appellant by : --None--
Respondent by : Shri Mudit Nagpal, Sr.D.R.

Date of Hearing 04.12.2018
Date of Pronouncement 30.01.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is against the order dated 30.01.2017 passed by the Commissioner of Income Tax (Appeals)-6, Ahmedabad arising out of the order dated 18.01.2016 for the Assessment Year 2013-14 passed by the ITO, Ward - 2(5), Bhavnagar under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “The Act”) with the following grounds:

- “1. *The learned ITO erred in law and on facts in passing the order under section 143(3) of the Income tax act, 1961 which is requested to be quashed.*
- 2 *The learned ITO erred in law and on facts in passing the order under section 143(3) of the Income tax act, 1961 by assessing the long term capital gain of Rs.82,262/- under the head income from other sources, which is requested to be quashed.*

Prayer: -

- (i) Consider the Income of Rs. 82262/- being gain from sale of shop under the head of "Long term capital gain" and not under the head Income from Other Sources.
- (ii) To set aside the assessment order passed u/s 143(3) of IT Act, 1961 by the ITO.

Your honour, appellant prays for leave to add to alter and/or to amend all or any of the grounds before the final hearing of the appeal."

2. The brief facts leading to this case is this that the assessee engaged in the business of Trading & Retailing filed its return of income for A.Y. 2013-14 through Electronic Media on 11.03.2014 which was processed u/s 143(1) of the Act. Subsequently, scrutiny notice u/s 143(2) of the Act was issued on 11.09.2014 and a notice 139D(C) of the Act for furnishing of hard copy of the return of income and financial accounts for A.Y. 2013-14 along with a notice u/s 142(1) r.w.s. 129 of the Act on 01.07.2015 was also served upon the assessee. It appears from the records that the dispute relates to Long Term Capital Gain (LTCG) on sale of Shop No.18 at Vihal Complex, Botad. The said plot was in the name of the father of the assessee which was purchased on 23.08.2008 at a consideration of Rs. 1,41,500/- by a registered deed bearing no. 3276/2/10 of 2008 registered with the office of Sub Registrar, Botad in the name of the father of the assessee being Shri Abbasali Barkatali Malaviya. Subsequently, the said shop was sold by a registered deed bearing no. 4557/41/10 of 2012 dated 19.11.2012, registered with the office of the Sub Registrar Botad in the name of the father of the assessee. The assessee as appears from the return of income has offered Rs. 82,262/- for taxation under the head LTCG on sale of the said shop which admittedly was recorded in the name of his father. Notice was served upon the assessee by the Assessing Officer as to why LTCG should not be treated taxable in the hands of his father and why such LTCG has been offered in the name of the assessee. In replying whereof, the assessee contended that the amount of Rs. 1,50,515/- for purchase of the said shop was advanced as loan by the assessee to his father who with that borrowed fund has purchased the shop in question. The entire thing

was done according to the assessee on the basis of the mutual understanding between the son and the father. Accordingly, the capital invested by the assessee and the profit and gain arising out of the sale of such shop has rightly been claimed by the assessee on the basis of this particular premise that the person who made the investment eligible to get the profit. However, the contention made by the assessee was not found acceptable by the Learned AO. He, therefore, ultimately found such claim as return on account of LTCG of Rs.82,262/- and treated the same as unexplained income received by the assessee from undisclosed sources. Hence, the same was assessed under the head income from other sources and added to the total income of the assessee. Interest u/s 234A, 234B, 234C was also charged. The appeal arising out of the said order preferred by the assessee before the Learned CIT(A) was rejected since the same was filed late upon rejection of the application for condonation of delay preferred by the assessee in preferring such appeal. Hence, the appeal before us.

3. At the time of hearing of the appeal, the Learned Counsel appearing for the assessee submitted before us that the assessee could not file the appeal in time for the reason beyond his control. The application for condonation of delay as made by the assessee explaining the reasons for such delay though placed before the first appellant authority the same was rejected in limine. He thus prayed before us for remitting the issue to the file of the Learned CIT(A) upon condoning the delay of 16 days in preferring such appeal before the Learned CIT(A) so rejected by him. On the contrary the Learned DR relied upon the order passed by the authorities below.

4. We have heard the respective parties, perused the relevant materials available on record. The application for condonation of delay of 16 days filed by the assessee on 11.03.2016 and an affidavit affirmed by the assessee reads as follows:

“I, Amirali Abbasali Malviya, aged adult residing at Botad do hereby solemnly affirm and declare on oath as under:

Assessment order u/s 143(3) yarned ITO has erred in passing the order u/s 143(3) of the IT Act, 1961 assessing income of Rs.82262/- under the head “income from other sources”. It is submitted that on the facts and circumstances of the case consideration of income under “income from other sources” head which is /absolutely incorrect, illegal and the penalty be deleted.

Due to death of assessee

02. I had a dispute with my tax consultant in respect of fees, quality of services etc. such dispute could not be solved inspite of our several meetings. I requested him to give back my file so that I can file appeal at CIT(A), Ahmedabad from another consultant but they failed to give me the file. Since, the necessary documents etc. were in possession with previous tax consultant, I was unable to file the appeal before CIT(A), Ahmedabad.

I was given the copy of ITO’s assessment order u/s 143(3) of Income tax act, 1961 on 31.01.2016. Immediately on the same day, I rushed to the office of other CA to whom I shown the order and assigned the work of CIT Appeal. Thereafter, on 05.02.2016, the dispute with previous tax consultant was over and he gave me the file containing the other documents including the orders.

Due to the dispute with previous tax consultant and not giving me the documents by him to me, I cannot filed the appeal before CIT, Ahmedabad within 30 days of receipt of the order of ITO, Ward 2(5), Bhavnagar by my authorized representative.

Prayer,

I am being a layman, not having the adequate knowledge of Income Tax Laws and I understand very little of Income Tax Laws. I am extremely sorry for the inordinate delay in filing appeal before CIT(A), Ahmedabad. I humbly submit that there is a bona fide and genuine reason for such delay which is purely technical and venial. I pray the Hon’ble CIT(A), Ahmedabad to be kind enough to condone the delay in filing of appeal. I regret my utter ignorance about income tax laws and its provisions of appeals.”

We have gone through the same and find sufficient merit in preferring the appeal with the delay of 16 days by the assessee which needs to be condoned. In fact, we had observed that such application ought to have been dealt with in its proper prospective by the Learned CIT(A) in order to rendere proper justice to the assessee. Hence, we condoning such delay set aside the issue to the file of the Learned CIT(A) to dispose of the same afresh taking into consideration the entire aspect of the matter on merit and the evidences so placed by the assessee before him. We further direct the Learned CIT(A) to

consider any other evidence which the assessee may choose to file at the time of the hearing of the appeal before him for proper adjudication of the matter.

5. In the result, assessee's appeal is allowed for statistical purposes.

This Order pronounced in Open Court on

30/01/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/01/2019

Priti Yadav, Sr.PS

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)-6, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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