

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
and  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2632/Bang/2018  
(Assessment year: 2012-13)

Shri C.C.Mohankumar,  
No.213, 4<sup>th</sup> Main, 7/A Cross,  
Subhash Nagar,  
Mysore-570023. ... Appellant  
*PAN:ABQPM 2107 D*

Vs.

Income-tax Officer,  
Ward 2(1),  
Mysore. ... Respondent

Appellant by : Shri Vageesh Hegde, CA.  
Respondent by : Shri M.K.Biju, Addl.CIT(DR)

Date of hearing: 25/02/2019  
Date of pronouncement: 28/02/2019

**O R D E R**

**Per PAVAN KUMAR GADALE, JM:**

The assessee has filed the appeal against the order of the CIT(A), Mysore, in 95/CIT(A)/Mys./2018-19 A.Y.2012-13 dated 23/07/2018.

2. The assessee has raised the following grounds of appeal:

**1.** “That the Assessment Order dt. 29.08.2016 passed by the Learned AO is opposed to fact and law because the AO erroneously classified the Capital Asset held as Short Term Capital Asset instead of Long Term Capital Asset and denied the related benefits/exemption which is unjustified.

2. That the Appeal may be allowed for the above ground and any other grounds that the Appellant may be permitted to adduce at the time of hearing.”

3. Brief facts of the case are that in response to notice u/s 148, the assessee has filed the Return of income electronically on 01/07/2006 with total income of Rs.48,67,704/-. Subsequently, the assessee filed the revised Return of income with total income of Rs.49,52,170/- including income from other sources of Rs.84,466/-. Notices u/s 143(2) and 142(1) of the Income-tax Act,1961 ['the Act' for short] were issued to the assessee and the learned AR appeared from to time and furnished details. The Assessing Officer, on perusal of the income-tax return and the documents filed in the course of assessment proceedings found that the assessee has claimed exemption from long-term capital gains in respect of sale of land allotted by the MUDA in the year 1993. But whereas on verification of information and enquiries, the AO found that the claim of the assessee cannot be accepted and treated the same as short term capital gains and assessed the total income of Rs.72,84,347/- and passed the order u/s 143(3) r.w.s 147 of the Act on 29/08/2016.

3. Aggrieved by the order, the assessee filed an appeal with the CIT(A) whereas the CIT(A), on perusal of the grounds of appeal and the statement of facts and the material on record found that the assessee has claimed exemption of long-term capital gains in respect of sale of land. Whereas the AO has considered it a short-term capital gain and further the assessee

has not furnished/filed the copy of the original notice of demand u/s 156 of the Act or has not furnished the certified true copy with an affidavit and further there is no appearance by the assessee to rectify the defective appeal. The CIT(A) has issued notice of hearing on the assessee by Speed Post and there was no compliance. Therefore, CIT(A) without going into merits of the case considered the appeal filed by the assessee as defective and unadmitted and dismissed. Aggrieved by the order, the assessee has filed an appeal before the Tribunal and the learned DR supported the lower authorities orders.

4. We heard rival submissions and perused material on record. We found that the order passed by the CIT(A) is *ex-parte* order treating the appeal as defective and unadmitted. In the course of hearing, the learned AR submitted that the original notice of demand u/s 156 of the Act could not be filed as the assessee has shifted the residence. The CIT(A) considered the facts of the case and non-prosecution by the assessee in rectifying defect and has dismissed. When a query was raised to Id. AR for non-submission of demand notice in spite of having sufficient time from the date of institution of the appeal to the date of hearing, the explanations of the learned AR are not satisfactory. But the learned AR prayed that an opportunity be provided before the CIT(A) to rectify the defects and prosecute the appeal.

**Page 4 of 4**

5. We, considering the circumstances of case and principles of natural justice are of the substantive opinion to restore the issue to the file of the CIT(A) for fresh adjudication. Further the assessee shall co-operate in submitting information for early disposal of the appeal and CIT(A), shall provide reasonable opportunity of hearing to assessee and pass a speaking order and we order accordingly.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 28<sup>th</sup> February, 2019.*

*Sd/-*

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Date : 28/02/2019  
*srinivasulu, sps*

*sd/-*

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore