

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1732/AHD/2016
(Assessment Year: 2010-11)**

Arvindkumar Suryanathsinh Verma, 44, Siddheshwarpark Society, Viratnagar Road, Odhav, Ahmedabad-382415	V/S	Income Tax Officer, Ward- 14 (2), Ahmedabad
(Appellant)		(Respondent)

PAN: ADHPV3613Q

**Appellant by : None
Respondent by : Shri N.K. Goyal, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 15 -10-2019

Date of Pronouncement : 27 -11-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-5, Ahmedabad dated 23.03.2016 pertaining to A.Y. 2010-11 and his main contention was that ld. CIT(A) erred on facts and in law in holding that

the appellant filed appeal almost 4 months & 26 days late without appreciating the facts that the appellant explained factual position in statement of facts that original appeal order and noticed were never served on the appellant and appellant preferred appeal within 30 days from the date of receipt of certified copy from the Assessing Officer.

2. Facts of the case are that the assessee has worked as Assistant Teacher with Ahmedabad Municipal School Board and have declared income under head salary, while filing the return.
3. During the course of assessment proceedings, it was noticed that assessee has sold the house property as per the sale agreement dated 01.12.2009 for the total consideration of Rs. 18,00,000/- and assessee has not declared the sale transaction while filing the return. Several notices were sent to the assessee but he could not appear before the ld. A.O.. Therefore, assessing officer passed an ex parte order and made total addition of Rs. 26,91,500/-.
4. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) and same was filed after four months and 26 days.
5. The assessee contention was that he has not received any notice and he got the certified copy of the assessment order and thereafter he filed the appeal before the ld. CIT(A). But ld. CIT(A) did not consider his appeal on merit and merely on the ground of delay, ld. CIT(A) confirmed the action of the ld. A.O.
6. The Assessee is a person of small means and a retired teacher of Govt. School. He may not be familiar with complex procedure. The delay is very small and no

serious prejudice appears to have occurred to revenue by such delay. The delay deserves condoned.

7. In the case of Collector Land Acquisition vs. Mst. Katiji reported in 1987 167 ITR 471 ; 1987 13 ALR 306, the Hon'ble Supreme Court held as follows:

“The Legislature has conferred the power to condone delay by enacting section 5 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. Why not every hour s delay, every second s delay The doctrine must be applied in a rational, common sense and pragmatic manner. In N. Balakrishnan v. M. Krishnamurthy reported in 1998 7 SCC 123, the apex court explained the scope of limitation and condonation of delay, observing as under: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. SCC 338, the Supreme Court took the view that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. In Vedabai alias Vaijayanatabai Baburao Patil v. Shantaram Baburao Patil reported in 2002 253 ITR 798; 2002 125 STC 375; 2001 44 ALR 577 the apex court made a distinction in delay and inordinate delay observing as under: In exercising discretion ; under section 5 of the Limitation Act, the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. In Shakuntala Devi Jain v. Kuntal Kumari reported in AIR 1969 SC 575, the hon'ble Supreme Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.”

8. In view of the aforesaid judgment, we set aside this matter back to the file of the Id. CIT(A) after condoning the delay and direct Id. CIT(A) to decide matter on merit. And we also direct assessee to appear before the Id. CIT(A) as and when he is directed to do so.

9. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in Open Court on 27 - 11- 2019

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy

Ahmedabad: Dated 27/11/2019

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad