

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

ITA NO.4363/MUM/2018 (A.Y: 2011-12)

Shri Tapendra Singh 503, Pushpa Kunj, "A" Road Churchgate, Mumbai – 400 020 PAN: ACPPS1095Q	v.	Income Tax Officer – 17(3)(4) Room No. 115 Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by : Shri Subodh Ratnaparkhi

Department by : Shri Maurya Pratap

Date of Hearing : 03.12.2019

Date of Pronouncement : 03.12.2019

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) -28, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 26.03.2018 for the Assessment Year 2011-12.

2. Assessee has raised the following grounds in its appeal: -

"1) *On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming addition by the learned A.O. of ₹.8,92,15,100/- under the head Long Term Capital Gain.*

2) *On facts, in circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in confirming the invoking provisions of section 50C by the learned A.O.*

3) *The appellant craves leave to add, amend, modify or delete the above grounds of appeal."*

3. There is a delay of 28 days in filing the appeal by the assessee and the assessee in its petition supported by the affidavit explained the reasons for the delay in filing the appeal as under: -

"1. I am assessed to tax by I.T.O. 17(3)(4), Mumbai based on my address at 503, Pushpa Kunj, 'A' Road, Churchgate, Mumbai - 400020. However, I am currently residing at my residence at Hyderabad as mentioned above.

2. I filed my return of income on 18.10.2014 declaring total income of Rs. 14,98,830/-. My assessment was completed u/s 143(3) r. w. s. 147 of I. T. Act, 1961 ("The Act") on 30-03-2015 assessing total income of Rs. 9,07,13,930/-. The learned A.O. assessed Long Term Capital Gain at Rs.9,01,76,250/- against the amount of Rs. 9,61,149/- returned by me.

3. I preferred appeal to learned CIT-A against the above addition. The appeal was fixed for hearing on 09.02.2018 and the same was adjourned to 09.03.2018. During relevant time I was staying at my Hyderabad residence and was diagnosed with slip disc of L4 & L5 Spine. I suffered from acute pain and was advised complete bed rest. Accordingly, I wrote various emails to learned Commissioner of Income Tax- Appeals on 08.03.2018, 15.03.2018, 20.03.2018, 23.03.2018 to adjourn hearing attaching Medical Certificate from Landmark Hospital situated at H. No. 1210, Block 2-C, Miyapur Hyderabad. The learned CIT-A rejected my request for adjournment and passed order dated 26.03.2018 deciding appeal on the basis of material on record without giving me sufficient opportunity to represent my case. The order of learned CIT-A was served at my residence in Mumbai on 06.04.2018 when I was based in Hyderabad.

4. Since I was confined to bed at Hyderabad, I could not file appeal against the order of learned CIT-A to Hon. Income Tax Appellate Tribunal. I came to Mumbai in first week of June 2018 and handed order

of learned CIT-A to my Chartered Accountant. Thereafter my Chartered Accountant advised me to file the appeal to Hon. Income Tax Appellate Tribunal. This resulted in delay in filing appeal before Hon. Income Tax Appellate Tribunal.”

4. Ld. DR opposed for condonation of delay.
5. On a perusal of the petition and the reasons explained therein for the delay in filing the appeal, we find the assessee is prevented with reasonable cause in filing the appeal in time. The assessee could properly explain the delay in filing the appeal and thus we condone the delay of 28 days and admit the appeal for disposing off the same on merits.
6. Coming to the merits of the case, Ld. Counsel for the assessee submits that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, requested that the matter may be restored to the file of the Ld.CIT(A). Ld. Counsel for the assessee submitted that assessee filed adjournment petition even on the last occasion i.e. 23.03.2018 when the matter has been taken up and this adjournment was rejected by the Ld.CIT(A).
7. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

8. We have heard the submissions, perused the orders of the authorities below. On a perusal of the Ld.CIT(A) order, we find that the even though the Ld.CIT(A) provided opportunity on several occasions assessee could not appear. Considering the totality of facts and submissions of the Ld. Counsel for the assessee and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 03rd December, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER
Mumbai / Dated 03/12/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum