

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

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 2320/Ahd/2018
(Assessment Years: 2015-16)**

Manubhai Madhavbhai Patel D-135, Ghantakarna Mahavir Market, Nr. New Cloth Market, Sarangpur, Ahmedabad	V/S	I.T.O., Ward-5(3)(4), Ahmedabad
PAN No. ABEP8912B		
(Appellant)		(Respondent)

**Appellant by : Shri V.A. Isani, A.R.
Respondent by : Shri R. R. Makwana, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 11-10-2021
Date of Pronouncement : 29-10-2021

PER MAHAVIR PRASAD, J.M.

1. This appeal has been filed by the Assessee is directed against the order of the Ld. CIT(A) vide Appeal No. CIT(A)-5/IIO Ward-5(3)(4)/10839/2017-18 order dated

20/09/2018 arising out of assessment order dated 26/12/2017. The assessee has taken following grounds of appeal:

- 1) *The Hon. CIT Appeals-5, Ahmedabad has erred in law in dismissing the appeal of the appellant and confirming the addition made by ITO Ward 5(3)(4).*
- 2) *The Hon. CIT has assessed Total Income of the appellant at Rs. 37,70,120/- u/s. 143(3) of the IT Act and as a result raised huge demand of Rs. 6,26,930/- in the order issued. The Ld. ITO has made addition of Rs. 22,25,000/- (Rs. 8,00,000/- + Rs. 14,25,000/-) on account of Long Term Capital Gain on Sale of Two Immovable Property.*
- 3) *3. The Hon CIT (A) has dismissed the appeal as the same was filed on 10/02/2018 instead of 26/01/2018, there was a delay of 14 days in filing the appeal. The Hon. CIT (A) has rejected the condonation filed by the appellant.*
- 4) *4. On the facts and in the circumstances of the case and in law the Hon. CIT (A) erred in not taking into consideration the material and documentary evidences placed on the records.*
- 5) *5. The Hon. CIT (A) has erred in law in not considering the various submission and explanation submitted by the appellant from time to time.*
- 6) *6. The order passed by AO, confirmed by CIT (A) is against the principle of natural justice.*
- 7) *7. The appellant craves leave to add, alter or amend any of the either before or at the time of hearing of the appeal.*

2. In this case, assessee is a transporter. It is noticed that assessee has sold one immovable property amounting to Rs. 32,00,000/- alongwith three co-partners (share of assessee is 1/4th) and another property sold at Rs. 14,25,000/- wherein no other co-partner is there and in the computation of income, assessee has not declared any capital gain for the year under consideration and did not file any reply. Therefore, Ld. A.O. made an addition of Rs. 22,25,000/-.

3. Against the said order, assessee preferred first statutory appeal before the Ld. CIT(A) and on account of some medical problem, assessee filed his first appeal delayed by 14 days. Though, assessee moved an application for condonation of delay and vehemently relied on the medical papers filed by him. But Ld. CIT(A). was not convinced with the submission of the assessee.

4. Now assessee has come before us by way of second statutory appeal. Undisputedly, Ld. CIT(A) has disposed of assessee's appeal without discussing merit of the case and refused to condone the delay of 14 days. We are of the considered opinion that on medical ground, such a small delay should have been sympathetically considered by the Ld. CIT(A) and he ought to have condoned the delay of 14 days.
5. Thus, in the interest of justice, we condone the delay of 14 days and set aside the matter back to the file of the Ld. CIT(A) to decide matter on merit after considering the submission and document to be filed before the Ld. CIT(A) and thereafter shall pass an order as per law.
6. In the result, appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in Open Court on 29 - 10- 2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 29 /10/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

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.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad