

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, HON'BLE JM AND
DR. ARJUN LAL SAINI, HON'BLE AM
(Virtual Court Hearing)

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	184/SRT/2018	Natvarbhai Kanjibhai Patel (HUF), 84, Yogeshwar Park, Adajan, Surat-395009. PAN: AAFHN 8673 M	The ITO, Ward-2(1)(3), Surat.	2010-11
2.	185/SRT/2018	Manojbhai Gijubhai Patel, 11, Sai Nagar Society, B/h Bhulka Bhavan, Adajan, Surat-395009. PAN: ALEPP 8631 K	The ITO, Ward-2(1)(2), Surat.	2010-11
3.	186/SRT/2018	Dahyabhai Somabhai Patel, Plot No.34, 35, Vadiya Nagar, Adajan Road, Nr. Ankur Society, Surat-395009. PAN: ADLPP 9969 R	The ITO, Ward-2(1)(1), Surat.	2007-08
4.	187/SRT/2018	Rajeshbhai Narsinhbhai Patel, 26, Sai Nagar Society, B/h Bhulka Bhavan, Adajan, Surat-395009. PAN: AKQPP 2699 L	The ITO, Ward-2(1)(2), Surat.	2007-08
5.	188/SRT/2018	Valiben Narsinhbhai Patel, 26, Sai Nagar Society, B/h Bhulka Bhavan, Adajan, Surat-395009. PAN: BGNPP 3195 D	The ITO, Ward-2(1)(2), Surat.	2007-08
6.	189/SRT/2018	Kishorbhai Gijubhai Patel, 11, Sai Nagar Society, B/h Bhulka Bhavan, Adajan, Surat-395009. PAN: ACIPP 2499 L	The ITO, Ward-2(1)(2), Surat.	2007-08
7.	190/SRT/2018	Parsottambhai Somabhai Patel, 26, Shyamal Bunglow, L P Savani Road, Opp. Green Arcade, Adajan, Surat-395009. PAN: ANQPP 8960 R	The ITO, Ward-2(1)(3), Surat.	2008-09
8.	191/SRT/2018	Kantibhai Parsottambhai Patel, 26, Shyamal Bunglow, L P Savani Road, Opp. Green Arcade, Adajan, Surat-395009. PAN: ADLPP 9968 Q	The ITO, Ward-2(1)(2), Surat	2007-08

9.	192/SRT/2018	Kantibhai Parsottambhai Patel, 26, Shyamal Bunglow, L P Savani Road, Opp. Green Arcade, Adajan, Surat-395009. PAN: ADLPP 9968 Q	The ITO, Ward-2(1)(2), Surat.	2008-09
10.	193/SRT/2018	Gijubhai Prabhuhai Patel, 11, Sai Nagar Society, Adajan, Surat-395009. PAN: ADGPP 1130 K	The ITO, Ward-2(1)(1), Surat.	2009-10
11.	194/SRT/2018	Gijubhai Prabhuhai Patel, 11, Sai Nagar Society, Adajan, Surat-395009. PAN: ADGPP 1130 K	The ITO, Ward-2(1)(1), Surat.	2010-11
12.	263/SRT/2018	Maheshbhai Parabhubhai Patel, 2444, Sai Rachna Society, LP Savani Road, Surat-395009. PAN: AOQPP 6740 L	The ITO, Ward-2(1)(2), Surat.	2009-10

Assessee by : Ms. Ukti Shah, AR

Respondent by : Shri J. K. Chandani, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 02/05/2022

घोषणाकीतारीख/Date of Pronouncement: 06/05/2022

आदेश / ORDER

PER DR. A. L. SAINI, AM:

1. This group of twelves (12) appeal(s), are part of Hazira Land Acquisition cases, all relates to penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. At the outset, Learned Counsel for the assessee submitted that all the appeals filed by the assessee are barred by limitations. All the assessees have moved separate petitions for condonation of delay. Each assessee filed separate affidavits for condonation of delay. We have examined the number of delay in each appeal. We have gone through affidavits filed by each assessee. We have gone through the chart (appeal-wise delay) filed by the assessee, which is reproduced below:

No.	ITA No. Penalty	Name of the assessee	ITA No. Quantum	Appeal time barred by	Affidavit
11	184/S/18	Natvarbhai Kanjibhai Patel HUF	370/A/15	14 days	Yes
12	185/S/18	Manojbhai Gijubhai Patel	374/A/15	14 days	Yes
13	186/S/18	Dahyabhai Somabhai Patel	2568/A/15	95 days	Yes
14	187/S/18	Rajesh Narsinhbhai Patel	433/A/15	27 days	Yes
15	188/S/18	Valiben Narshibhai Patel	1619/A/15	No delay	NA
16	189/S/18	Kishorebhai Gijubhai Patel	373/A/15	14 days	Yes
17	190/S/18	Parsottambhai Somabhai	425/A/15	No delay	NA
18	191/S/18	Kantibhai Parsottambhai Patel	1643/A/15	10 days	Yes
19	192/S/18	Kantibhai Parsottambhai Patel	1641/A/15	38 days	Yes
20	193/S/18	Gijubhai Prabhubhai Patel	422/A/15	48 days	Yes
21	194/S/18	Gijubhai Prabhubhai Patel			
22	263/S/18	Maheshbhai Prabhubhai Patel	1621/A/15	No delay	NA

From the above chart, we noted that there is minor delay in filling these appeals. On the other hand, Ld. DR pleaded that delay should not be condoned.

3. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) has observed as follows:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.”

When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. The reasons given in the each affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing these appeals. We, therefore, condone the delay in all the appeals and admit all the appeals for hearing.

4. Facts as extracted from the orders of the lower authorities are that the land of aforesaid individual assessee was acquired by Special Land Acquisition Officer, Surat for M/s Essar Steel Ltd. The Revenue / Assessing Officer made re-opening in all cases under section 147 of the Act. Assessment was completed under section 143(3) r.w.s. 147 of the Act in cases of all different assessee. The Assessing Officer while passing the separate assessment orders made addition on account of Long Term Capital Gains (LTCG) on transfer of land, capital gain on the certain amount received for permanent (pucca) structure was treated as income from other sources and in some cases the agriculture income was treated as income from undisclosed sources. The assessing officer levied penalty under section 271(1)(c) on various additions. The Assessing officer levied penalty @100% of tax sought to be evaded. On appeal the Ld. CIT(A) upheld the action of assessing officer. Thus, further aggrieved the assessee(s) have filed present appeal before this Tribunal.

5. Ms. Ukti Shah, learned authorised representative (AR) of the assessee appeared. We have heard the submissions of learned authorised representative of the assessee(s) and the learned departmental representative for the revenue and have gone through the orders of the lower authorities. The ld AR of the assessee submits that in all quantum assessment appeals of the Hazira land appeals/ cases either the additions has been deleted or in some cases the additions on accounts of capital gain for the receipt against the pucca structure has been sustained only on estimation basis. The penalty in lead case of Ambaben J. Patel has also been deleted. Thus, the grounds of appeal raised by him in two cases are covered. The ld AR for the assessee further submits that in other penalty appeals under section 271(1)(c), all penalty has been deleted vide order dated 26.04.2022 in 15 similar appeals.

6. On the other hand the learned DR for the revenue supported the order of assessing officer and ld CIT(A).

7. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully in quantum assessment as well as in penalty matters. We find that against various additions made in the assessment, the

assessee(s) filed appeal before Ld. CIT(A). The Ld. CIT(A) in quantum assessment, upheld the addition of capital gain on transfer of land. However, the income added under the head “income from other sources” against the pucca structure was changed to as “income from capital gains”. As the assesseees were not allowed the cost of acquisition and improvement on permanent structure, they were allowed 50% as cost of construction or improvement, received against permanent structure and the additions on account of undisclosed source was treated as income form agriculture activities.

8. On further appeal before Tribunal, the Tribunal held that addition of capital gain on account of transfer of land/ acquisition of land is not taxable as the said land / impugned land is not ‘capital asset’ as defined under section 2(14)(iii)(a) of the Act. The land transferred by individual assessee(s) does not falls in the Municipal Area. Hazira Notified area is not a Municipal area or deemed municipal area, therefore, the receipt/ gain on transfer of land is not taxable under Income tax Act. Further, the assesseees on their alternative pleas were also held eligible for exemption under section 10(37) of the Act as the land was compulsorily acquired by Government of Gujarat by completing statutory formalities under Land Acquisition Act, 1882. The land was used for agriculture purpose for two years prior to its acquisition. And the assessee(s) fulfilled all the requisite condition for seeking exemption under section 10(37) of the Act. The other addition made under the head “capital gains” against the cost of pucca structure, the assessee’s were allowed 60% as cost of acquisition or cost of improvement, against the relief of 50% as allowed by Ld. CIT(A). Further, in some cases, the agricultural income offered by assessee(s) was treated as “income from other sources” has been held as “income from agricultural activities”. Thus, in quantum appeals all the assesseees were granted substantial relief in deleting major part of additions and only part of capital gains only on account of cost of improvement on pucca structure was partly upheld on estimation basis. Therefore, all substantial additions were either deleted or upheld only on estimation basis. In our considered view no penalty under section 271(1)(c) of the Act is leviable on all the assesseees. In the result, the grounds of appeal raised by the assessee(s) are allowed.

9. In the result, all the appeals filed against the levy of penalty under section 271(1)(c) are allowed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 06/05/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

Surat / दिनांक/ Date: 06/05/2022

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat