

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Makarand V. Mahadeokar , Accountant Member**

**ITA Nos. 1005 & 1006 /Ahd/2024
Assessment Year 2013-14**

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| Menaben Bhikaji Thakor, Shankar Bhuvan, Makarbiyo Vas, Mohmedpura, Ahmedabad PAN: AWQPT6567M (Appellant) | Vs | The ITO, Ward-3(3)(1) Ahmedabad (Respondent) |
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**Assessee by: Shri Biren Shah, A.R.
Revenue by: Shri Nitin Vishnu Kulkarni, Sr. D.R.**

Date of hearing : 22-10-2024
Date of pronouncement : 24-10-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

These two appeals are filed against the order dated 05-03-2024 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

ITA No. 1005/Ahd/2024

“1. The CIT(A) erred in law and on facts in dismissing the appeal of the appeal on the ground that there is delay in filing an appeal without appreciating that there is no delay in filing an appeal as per the relaxation given by Hon'ble Supreme Court vide order dated.10.01.2022 in Suo Moto W. P No.3 of 2020 and thereby erred in confirming the order of Assessing Officer.

3. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise.”

3. The assessee has filed his return of income declaring income of Rs. 3,60,330/- for assessment year 2013-14 and the same was processed u/s. 143(1) of the Act. The return of income filed. The assessee has shown the income from capital gain of Rs. 2,40,901/- and income from other sources of Rs. 1,29,429/-. After claiming deduction under chapter VIA of Rs. 10,000/- total income was declared at Rs. 3,60,330/-. The Assessing Officer observed that the assessee has shown immovable of Rs. 40,00,000/- from assessment year 2013-14 and hence the assessee's case was reopened u/s. 147 of the Act. The notice u/s. 148 dated 24-03-2020 was issued after duly recording the reasons for reopening. In response to the notice, the assessee did not file the return of income nor furnished any explanation. Thereafter, the statutory notices u/s. 142(1) was issued and show cause notice dated 22-09-2021 was also issued but the same was not complied with by the assessee and therefore, the Assessing Officer passed assessment order u/s. 147 r.w.s. 144 thereby disallowing the deduction/exemption u/s. 54F of the Act amounting to Rs. 16,55,154/- and also making the addition of long term capital gain u/s. 50C of the Act amounting to Rs. 25,55,279/-.

4. Being aggrieved by the assessment order, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee.

5. The ld. A.R. further submitted that the CIT(A) has passed the ex-parte order as the assessee's appeal was held as belatedly filed before the CIT(A). The ld. A.R. submitted that the assessee was illiterate person and was not knowing the legal intricacies i.e. of tax components and therefore the consultant was handling the case before the ld. CIT(A) has not attended the proceedings and the matter was dismissed on the ground of delay. The ld. A.R. further submitted that the delay before the CIT(A) may be condoned and the matter may be sent back/remanded back to the file of CIT(A) for proper adjudication of the issues on merits. The ld. A.R. further submitted that there is five days delay in filing the present appeal before the Tribunal as well and the same also may be condoned. On the contrary, ld. D.R. relied upon the assessment order and the order of the CIT(A).

6. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the assessee being illiterate person was not knowing about the intricacies of filing appeal before the CIT(A) within the stipulated time and since the assessee's consultant has also not attended and followed up, it will not be treated as default of the assessee. Thus, the delay in filing the appeal before the CIT(A) is condoned. The delay in filing the appeal before the Tribunal is also condoned as it is a mere five days delay. Further, the matter is remanded back to the file of CIT(A) for proper adjudication of the issues on merit after taking cognizance of the evidences filed by the assessee by following the due procedure of filing additional evidences as per rule 46 of the Income Tax Rules, 1962. Needless to say, the assessee be given an opportunity of hearing by following principles of natural justice. It is further directed to the assessee

that it will fully co-operate with the proceedings before the Id. CIT(A) and will co-operate with the speedy disposal of the appeals before the CIT(A). Thus, ITA No. 1005/Ahd/2024 is partly allowed for statistical purposes.

ITA No. 1006/Ahd/2024

7. The grounds of appeal are as under:-

“1. The CIT(A) erred in law and on facts in dismissing the appeal of the appeal on the ground that there is delay in filing an appeal without appreciating that there is no delay in filing an appeal as per the relaxation given by Hon'ble Supreme Court vide order dated.10.01.2022 in Suo Moto W. P No.3 of 2020 and thereby erred in confirming the order of Assessing Officer.

3. The appellant craves leave to add, amend or alter the grounds of appeal at the time of hearing, if need arise.”

8. As relates to ITA No. 1006/Ahd/2024, the same related to the penalty order u/s. 271(1)(c) of the Act, thus, the same is also remanded back to the file of CIT(A) for proper adjudication of the issues on merits. The delay in filing the said appeal before the Id. CIT(A) is also condoned. Thus, ITA No. 1006/Ahd/2024 is partly allowed for statistical purposes.

9. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 24-10-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/10/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद