

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "D" Bench, Mumbai.

Before Shri Anikesh Banerjee (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 2986/Mum/2024 (A.Y. 2012-13)

I.T.A. No. 2987/Mum/2024 (A.Y. 2012-13)

Rakesh Kumar Patria Through POA Holder C/o. Mr. Ranu Khurrana Bhoomi Gardenia-2 Flat No. 10, Raod Pali Kalmboli, Sector-20 Maharashtra-400 078.  PAN : ALTPP5001A  (Appellant)	Vs.	ITO 28(2)(1) Tower No. 6 Vashi Railway Station Commercial Complex, Vashi Navi Mumbai Mah. 400 703.  (Respondent)
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Assessee by	Shri Roshan Ochani
Department by	Shri Sunny Kachhwaha
Date of Hearing	07.10.2024
Date of Pronouncement	11.11.2024

ORDER

Per Omkareshwar Chidara (AM) :-

Both the above cited appeals are clubbed and common order is being passed as the issue is same and appellant is same person.

ITA No. 2987/Mum/2024

2. As the appellant has not filed the return of income, the learned Assessing Officer (AO for short) issued notice u/s. 148 of the Income Tax Act (the Act for short) to find out the leviability of capital gain on the sale of immovable property amounting to Rs. 86 lakhs as mentioned in the assessment order. Two opportunities were given and the appellant was not traceable nor there is any compliance for the notices sent. Hence, the Ld. AO completed the assessment u/s. 144 of the Act. As per the AIR data received, the Ld. AO has computed short term

capital gains of the immovable property and raised the demand. As mentioned above, since the appellant has not complied with the notices, the Ld. AO has completed the assessment ex-parte u/s. 144 of the Act.

3. Aggrieved by the assessment order, the appellant filed an appeal before learned Commissioner of Income Tax (Appeals) [the Ld. CIT(A) for short] with a delay of 564 days. As the Ld. CIT(A) was not convinced with the reasons given in filing the appeal with delay, the Ld. CIT(A) dismissed the appeal of the appellant by holding that the delay of 564 days is not justifiable and hence not condoned. He that the appeal of the appellant is barred by limitation and hence dismissed the appeal.

4. The appellant filed an appeal before the ITAT stating that he is an NRI for the last twenty years and he does not have family in India. Hence, he does not know about the income tax proceedings which were completed ex-parte and he filed an appeal with delay and accordingly the appellant filed an affidavit and requested the ITAT to condone the delay and admit the appeal.

5. During the appeal proceedings before the ITAT, the Ld. AR of the appellant pleaded that he may be given one more opportunity to explain levy of capital gains because he already paid relevant capital gain tax. Ld DR relied on the orders of the Ld. AO and the Ld. CIT(A).

6. After hearing both sides, it is decided to condone the delay and remand the matter back to the file of the Ld. AO. The Ld. AO is directed to give an opportunity to the appellant to explain levy of capital gains tax. The appeal of the appellant is allowed for statistical purposes.

ITA No. 2986/Mum/2024

7. Facts in this appeal are same as in ITA No. 2987/Mum/2024. In this appeal, the appellant contested levy of penalty on capital gain tax mentioned in the assessment order. Facts being same, Ld. AR of the appellant has pleaded that he

may be given an opportunity to explain levy of capital gain tax itself and hence penalty levied by the Department may be cancelled.

8. Ld. DR opposed the plea of Ld. AR of the appellant. As mentioned above, the Bench has decided to condone the delay and remand the matter back to the Ld. AO with regard to main issue itself, consequent levy of penalty is also remitted back to the Ld. AO. The appeal of the appellant is allowed for statistical purposes.

Order pronounced in the open court on 11<sup>th</sup> November, 2024.

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 11.11.2024

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS