IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1340/SRT/2024

Assessment Year: (2012-13)

(Hybrid hearing)

Hetalkumar Chandrakantbhai Patel, A-371/3, Sundervan Raw House, Nr. Subhash Garden, Jahangirabad, Bhesan, Surat - 395006	**Vs.**	The ITO, Ward – 1(3)(7), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: BKRPP5151R		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी /Respondent)**

Appellant by	Shri Rajesh Upadhyay, AR
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	02/04/2025
Date of Pronouncement	07/05/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 25.04.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2012-13.

2. Grounds of appeal raised by the assessee are as under:

> *"1. Ld. CIT(A), NFAC has erred in law and on fact to confirm AO's computation of capital under his ex-parte appeal order without providing adequate opportunity of hearing as well as without going in to the merits of the case.*
>
> *2. Ld. CIT(A), NFAC has erred in law and on fact to confirm AO's addition on account of LTCG that worked out by the AO by taking 50C value and that to without allowing deduction for index cost of acquisition as on 01.04.2001."*

3. During the course of hearing, the learned Authorized Representative (ld. AR) of the assessee requested that a small error in ground No.2 may be modified to read as under:

> *"2. Ld. CIT(A), NFAC has erred in law and on fact to confirm AO's addition on account of LTCG that worked out by the AO by taking 50C value and that two without allowing deduction for index cost of acquisition either as on 01.04.2001 or 01/04/1981."*

3.1 Since the facts are on record, the request for modification of the earlier ground is allowed. Reliance is placed on the decision of the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT, (1998) 229 ITR 383.

4. The appeal filed by assessee is barred by 184 days in terms of provisions of Section 253(3) of the Act. The assessee has filed an affidavit giving reasons for delay in filing of appeal before the Tribunal. In the affidavit, it has been stated that order of CIT(A) dated 25.04.2024, has been served electronically through portal and presumed to be served on the same day. The appeal is filed before the Tribunal on 24.12.2024, which is late by 184 days. The tax matter was dealt with by his earlier tax consultant, Shri Kishorbhai Patel. After completion of assessment proceedings, the order of CIT(A) was handed over to Chartered Accountant (CA), M/s Kansariwala & Chevli. Service of appeal order was neither in his knowledge nor his tax consultant. Later on, the appellant received penalty notice, dated 17.12.2024 in physical mode. After receiving the notice, his tax consultant stated that penalty cannot be levied when appeal is pending before CIT(A). The appellant was totally unaware of dismissal of appeal by CIT(A). The appellant was subsequently advised to hand over the

matter to Shri Rajesh M. Upadhyay to take urgent remedial action under the law, who filed the present appeal before the Tribunal. The delay in filing appeal was neither willful nor deliberate but due to circumstances beyond control. The ld. AR requested to condone the delay in the interest of justice and decide the appeal on merit.

5. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the revenue opposed the prayer for condonation of delay. He submitted that the assessee was negligent, inactive and not diligent.

6. We have heard both the parties on this preliminary issue of delay in filing appeal. In the affidavit, it is submitted that the appellant came to know about the dismissal of appeal after receipt of the penalty notice in physical mode. We find that assessee was not negligent but due to absence of legal advice of earlier tax consultant, there was delay in filing the present appeal. The delay in filing the appeal was not deliberate and intentional on the part of assessee. Moreover, the assessee is not going to be benefitted by filling appeal belatedly. It is now fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, the reasons given in the affidavit for condonation of delay are reasonable and the same would constitute sufficient cause for the delay in filing this appeal. We, therefore, condone the delay and admit the appeal for hearing.

7. The facts of the case in brief are that the assessee did not file return of income for AY.2012-13 and the assessee was identified as a non-filler in the Non-filler Monitoring System (NMS). From the information available in ITS, the Assessing Officer (in short, 'AO') found that the assessee sold an immovable property along with three other co-owners for Rs.95,00,000/- but the market value of the property as per the stamp valuation authority was Rs.1,09,83,750/-. Hence, AO observed that 1/4th value of property, i.e., Rs.27,45,937/- escaped assessment in the hands of the assessee. The AO issued notice u/s 148 on 30.03.2019 but no return was filed. The AO issued various notices and show cause notice, which is mentioned at page 2 of the assessment order. Since the assessee did not file any response, AO invoked provisions of section 144 of the Act. He has disregarded the valuation report of the land as on 01.04.2001 because amendment for valuation as on 01.04.2001 was by the Finance Act, 2017 and hence not applicable for AY.2012-13. The AO did not allow the cost of acquisition of the land sold by assessee because it was acquired from the ancestors and no details were filed by assessee in this regard.

8. Aggrieved by the order of AO, the assessee filed appeal before CIT(A). Only one ground was raised, which pertained to addition of Rs.27,43,937/- u/s 50C of the Act. The CIT(A) issued various notices which were not responded to nor any request for adjournment was filed. Thereafter, the CIT(A) has extracted the relevant part of the assessment order and observed that

assessee failed to furnish any written submission in support of the grounds raised in the appeal. He has observed assessee was non-compliant even before the AO. He has, therefore, dismissed the appeal of the assessee.

9. Aggrieved by the order of CIT(A), the assessee filed the present appeal before the Tribunal. The learned Authorized Representative (ld. AR) of the assessee submitted that the property sold by the assessee was an ancestral property. The assessee did not file the return of income because there was loss as per the computation of income by him. He submitted that neither AO nor CIT(A) has allowed cost of acquisition of the property sold by the assessee. Though the assessee is not eligible for valuation as on 01.04.2001, the assessee was certainly entitled for indexed cost of acquisition from 01.04.1981. Since cost of acquisition has not been allowed by the lower authorities, he requested that the matter may be set aside to the AO for fresh adjudication.

10. On the other hand, the learned Senior Departmental Representative (ld. Sr. DR) for the revenue supported the orders of lower authorities. He submitted that in absence of details and return of income, the orders passed by the lower authorities cannot be faulted.

11. We have heard both the parties and perused the materials available on record. We have also gone through the relevant provisions of the Act. There is no dispute regarding the fact that assessee failed to furnish relevant details during the proceedings before the lower authorities and hence cost of

acquisition was taken at Rs. Nil. The mode of computation of capital gain is provided in section 48 of the Act. As per the provisions of the said section, the income chargeable under the head "Capital gains" shall be computed by deducting from the full value of consideration as a result of the transfer of the capital asset (i) expenditure incurred wholly and exclusively in connection with such transfer and (ii) the cost of acquisition of the asset or the cost of any improvement thereto. The assessee had filed the valuation report of the land as on 01.04.2001 and claimed indexed cost of acquisition of the property sold by him. The AO did not allow the same because amendment to change the base year for calculation of capital gains and consequently the cost of inflation indexation from 01.04.2001 was brought in by the Finance Act, 2017 w.e.f. AY.2018-19 and subsequent years. Since the assessment pertains to AY.2012-13, the valuation report submitted by the assessee was ignored and cost of acquisition was taken as Rs. Nil. The assessee inherited the impugned land along with other three co-owners. Hence, the assessee was eligible for indexed cost of acquisition from 01.04.1981. The order of CIT(A) is accordingly set aside and the matter is remanded to the file of AO for fresh assessment. The AO is directed to allow benefit of indexed cost of acquisition from 01.04.1981. If the valuation report of the assessee is not acceptable, the AO may refer the matter to DVO for valuation of the land and allow the indexed cost of acquisition in accordance with law. For statistical purposes, the appeal of the assessee is allowed.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 07/05/2025

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(BIJAYANANDA PRUSETH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat
दिनांक/ Date: 07/05/2025
SAMANTA
Copy of the Order forwarded to:

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat