



आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC"  
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.522/RJT/2025  
निर्धारण वर्ष/Assessment Year :2016-17

<b>Dilip Kantilal Kubavat</b> Prop. Vijay Dairy Farm, Near Ramdhun S V P Road, Porbandar - 360575	बनाम/ Vs	<b>ITO</b> Ward 2 (3), Porbandar 360575
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AZFPAK8009B</b>		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sagar Shah, Ld. AR  
राजस्व की ओर से/Revenue by : Shri Dheeraj Kumr Gupta, Ld. Sr-DR

सुनवाई की तारीख/**Date of Hearing** : **09/09/2025**  
घोषणा की तारीख/**Date of Pronouncement** : **14 /10/2025**

आदेश/**Order**

**Per, Dr. Arjun Lal Saini, A.M**

The present appeal has been filed by the Assessee, against the order passed by the Learned Commissioner of Income Tax (Appeal) [hereinafter referred to as "CIT(A)"], dated 21.03.2025, arising in the matter of assessment order passed u/s 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. In this appeal, the assessee has raised multiple grounds of appeal. However, the solitary grievance of the assessee is that the ld CIT(A) erred in not to consider the basic fact that the assessee has gifted the property to his sister in law (younger brother's wife) that is, to a relative for a consideration



of Rs. 4,90,000/- dated 09.07.2015, therefore, when the property is sold for a value lower than the stamp duty value of the property, than, in that case, provisions of Section 50C is not applicable, as it is a gift to the relative, which is exempt from tax, and therefore, the addition made of Rs. 11,93,673/- u/s 50C, is against the provisions of the law.

3. The appeal filed by the assessee for assessment year (A.Y.) 2016-17 is barred by limitation by 80 days. The assessee has moved a petition for condonation of delay requesting the Bench to condone the delay. Learned Counsel for the assessee, explained the reasons for delay, stating that order passed by the CIT(A) never reached to the assessee because the online portal displays E-mail Address and Mobile Number which belonged to the "Tax Return Preparer, who did not inform to the assessee. Subsequently, the assessee received physically penalty notice issued u/s 271(1)(c) for A.Y. 2016-17 dated 29.06.2025 wherein it was mentioned "*you had preferred appeal which has been disposed of by the 1st appellate authority, i.e. CIT(A).*" On perusal of this notice, the assessee immediately approached the consultant. Therefore, in this process, the delay of 80 days has occurred, which may kindly be condoned.

4. Learned DR for the revenue submitted that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. Hence, delay should not be condoned.



5. I have heard both the parties on this preliminary issue. I have gone through the contents of the petition for condonation of delay. The learned Counsel adverted my attention to the reasons for condonation of delay before Ld.CIT(A) and urged for a benign view and sought condonation of delay of 80 days in filing the appeal before the Tribunal. A perusal of the reasons and sufficient cause explained by the Id. Counsel for the assessee, gives me an impression of existence of mitigating circumstances to enable me to exercise my discretion in favour of the assessee. Accordingly, the delay is condoned in filing the appeal.

6. Brief facts qua the issue are that the assessee has e-filed its return of income for the assessment year 2016-17, declaring total income of Rs.2,41,110/- and agriculture income of Rs.5,60,400/- on 18.03.2018. The return of income was processed u/s 143(1) of the I.T. Act, accepting the returned income. The assessee's case was selected under limited scrutiny assessment by CASS and notice u/s 143(2) of the Income-tax Act, 1961 was issued by the assessing officer on 09.08.2018 and served upon assessee on 10.08.2018. The assessee has sold a non -agricultural land for Rs.4,90,000/-, vide sale deed No. 3929 dated 08.07.2015. On verification of stamp duty paid by the assessee, it was observed that the value of the land as per stamp duty paid was Rs. 16,83,673/- and the document has been executed only for sale consideration at Rs. 4,90,000/-. The assessing officer noted that these transaction attracted the provision of section 50C of the Income Tax Act, therefore, the assessing officer has confronted the issue to the assessee, vide show cause notice issued dated on 03/12/2018 and asked the assessee to explain as why the amount of Rs. 11,93,673/- (Rs. 16,83,673/- less Rs. 4,90,000/-) should not be added to total income under Long Term Capital Gain by invoking section 50C of Act.



7. In response, the assessee had submitted its reply before the assessing officer, with documentary evidences stating that the land was transferred to his sister-in-law and therefore, the deed was in nature of gift. However, due to mistake by bond writer, it was treated as sale transaction. The assessee can change such transaction by making correction deed. The reply of the assessee during assessment proceeding, is as under:

*“3. Sold of property is to our family member i.e. to sister in law (my younger brother wife Mrs. Ritaben Kaushikbhai Kubavat) actually such transaction is of in gift nature, by mistake our bond writer treated as sale transaction, we can change such transaction by making correction deed. Considering above it is requested to your sir do not attract provision of section 50 C of the IT Act 1961 and not to add in total income for A.Y.2016-17.”*

8. However, assessing officer rejected the above contention of the assessee and made addition on account of index cost of acquisition at Rs.2,95,078/- and an addition of Rs.11,93,673/-, under section 50-C of the Act.

9. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before Ld. CIT(A) who has confirmed the action of the assessing officer. The Ld. CIT(A) has just reiterated the facts narrated in the assessment order and confirmed the addition made by the assessing officer, therefore assessee is in appeal before this Tribunal.

10. Learned Counsel for the assessee, vehemently argued that the transaction under consideration is a gift by one family member to another family member and such gift, among the family members, is exempted from tax. The assessee has filed affidavit and affidavit from the purchaser of the land where both the person has considered the differential amount between the stamp duty paid and document price, as gift for consideration, before assessing officer as well as before appellate authority. The Ld. Counsel further submitted that the sale deed was executed by the assessee in favour of the brother's wife. Therefore, brother's wife is a



relative, hence gift to relative is exempted from tax. Therefore, no any tax should be imposed on the assessee. By mistake, the assessee has offered the long term capital gain, as the assessee was not properly advised by his Advocate and because of the mistake of the Advocate, the assessee has offered tax on such transaction, which should be refunded to the assessee. The Ld. Counsel for the assessee, in order to prove that this sale deed was executed by the assessee in the favour of brother's wife, the assessee has furnished sale deed and the affidavit to demonstrate that the assessee has executed the sale deed in favour of brother's wife. Therefore, the transaction under consideration is not subject to tax. The assessee for this purpose submitted before the Bench following documents and evidences:

i.	<i>Sale Deed of Property</i>	<i>Paper Book page Nos. 8 to 21</i>
ii.	<i>Proof evidencing the relationship between the purchase and sale parties</i>	<i>Paper Book page Nos. 22 to 25</i>
iii.	<i>Affidavit of the assessee</i>	<i>Paper Book page Nos. 26 to 28</i>
iv.	<i>Affidavit of the assessee's younger brother's wife (Rita Kubavat)</i>	<i>Paper Book page Nos. 29 to 31</i>
V.	<i>Proof of Ownership of Property- Purchase Deed</i>	<i>Paper Book page Nos. 32 to 37</i>
vi.	<i>Annexure A and the documentary evidence</i>	<i>Paper Book page Nos. 38 to 57</i>

11. Therefore, Ld. Counsel submitted that considering these facts and circumstances, no tax should be imposed on the assessee and no addition should be made by the AO, and in fact, the tax offered by the assessee wrongly, should also be refunded to him.

12. On the other hand, Ld. DR for the Revenue submitted that the assessee has offered the transaction for tax, *suo- motto* and moreover, the assessee's case doesn't fall under the provisions of Section 56(2)(vii) of the Act. The Section 56(2)(vii) of the Act is applicable only to the purchaser. Therefore, the assessee's case is not covered under the provisions of Section 56(2)(vii) of the Act. The Ld.



DR also submitted that the assessee's case is covered u/s 50C of the Act. The Ld. DR further pointed out that this is not the case of gift, as there is a consideration involved in this transaction, therefore, addition made by the assessing officer may be upheld.

13. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In my considered view, it was wholly erroneous on the part of the authorities below to determine the tax, on the gift, from relative of the family. It is a settled Law that, only the real income has to be taxed. It is the duty of the tax authorities to act properly and judiciously. As per CBDDT circular dated 03.11.1955 cited in Choksi vs. CIT (107 ITR 363) and also as held in the decisions of CIT vs. Ahmedabad Miles (128 ITR 486), CIT vs/ Mattu (139 ITR 1020), CIT vs. Mahalaxmi Mills (160 ITR 920) (SC) CIT vs/ Anger Pressings (161 ITR 159) (SC) and other such cases, it is the duty of the Assessing Officer to draw attention of the assessee to the deductions, relief, and refund to which, he / she himself / herself to be entitled, under facts of the case, if assessee is omitted to make the claim. The Hon'ble Justice Khanna in the case of Simon Carves (105 ITR 12) (SC) has held that tax authorities would not be acting properly and judiciously, if they exercise their power in the manner most beneficial to the revenue and consequently most adverse to the assessee....” The same ratio was held in the case of (i) Raghuram Grah Pvt. Ltd.(281 ITR 1147) and (ii) Jayamal v/s CIT (230 ITR 142). The courts have held in cases given below that if excess tax has been paid by in advance, the Assessing Officer is bound to refund it under the general law and independently of Chapter XIX or any other provisions of the Act.

(i) OCM v/s CIT (138 ITR 689)

(ii) Depchand v/s CIT (145 ITR 676)



- (iii) CST v/s Auriya 167 ITR
- (vi) Salonah v/s Supt of Taxes 172 ITR 42 (SC)
- (v) C F Sundaram (163 ITR 662)
- (vi) Narayan Row v/s Model Mills (64 ITR 67) (SC)
- (vii) Vallabh v/s Union of India (UOI) (155 ITR 560)(SC)

Therefore, a combined reading of the above decisions of the Hon'ble courts leads to a conclusion that if an assessee is entitled to the benefit or relief, then, he / she cannot be denied for the reasons that he /she failed to claim it, and excess tax recovered from the assessee by the department, wrongly, should be refunded to the assessee.

14. In the assessee's case under consideration, the assessee has duly submitted the fact at the very beginning of the assessment that he had transferred the immovable property to a relative, that is, his younger brother's wife, that is, sister-in-law- Ritaben Kubavat, which is not disputed by the Assessing Officer. Due to the mistake of bond writer, it was treated as sale consideration, even when the property was transferred to relative of the assessee. Moreover, I find that assessee under consideration is a **relative**, has not been disputed by the assessing officer. At this juncture, it is appropriate to refer the explanation of Section 56(2), which defines "Relative" as under:

*“Explanation. For the purposes of this clause, "relative" means-*

- (i) *spouse of the individual.*
- (ii) *brother or sister of the individual.*
- (iii) *brother or sister of the spouse of the individual.*
- (iv) *brother or sister of either of the parents of the individual.*
- (v) *any lineal ascendant or descendant of the individual.*
- (vi) *any lineal ascendant or descendant of the spouse of the individual.*
- (vii) *spouse of the person referred to in clauses (ii) to (vi);”*



15. At this juncture, it is relevant to refer the provisions of Section 56(2)(x) of the Act, which are as under:

*“Section 56(2)(x) - where any person receives, in any previous year, from any person or persons on or after the 1st day of April 2017, -*

*(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*

*(b) any immovable property, -*

*(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property.*

*(B) for consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:-*

*(i) the amount of fifty thousand rupees; and*

*(ii) the amount equal to ten per cent of the consideration:*

*Provided that this clause shall not apply to any sum of money or any property received-*

*(1) from any relative; or*

Therefore, considering the above provisions of the law, that is, Section 56(2)(x), any property transferred to the relative for inadequate/lower consideration is not be termed as income and therefore, the same is not taxable as per the provisions of the law. Also, the provisions of Section 50C are not applicable in such case where it is expressly excluded as per the law. The assessee submitted copies of the ration cards evidencing their relationship which are enclosed from Page No. 22 to 25 of paper book. According to the family chart, and Rasan card, Smt. Rita Kubavat is the wife of brother of the assessee, that is, Kaushik Kubavat, the assessee and who are real brothers. Therefore, the transaction covered is considered among the relatives as per above explanation. All these facts are duly mentioned in the Affidavits filed by the assessee at the appellate stage also.



16. I find that on facts, as the CIT(A) as well as assessing officer have failed to consider the basic fact that the assessee has sold the property to his sister in law (younger brother's wife), that is, to a relative and in the notarized affidavits of the assessee as well as his sister-in-law wherein it is clearly mentioned that the stamp duty value over and above sale consideration is to be considered as gift. Therefore, based on these facts and circumstances, I delete both the additions and allow the appeal of the assessee.

17. In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 14/10/2025.**

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

राजकोट /Rajkot  
दिनांक/ Date: 14 /10/2025

By order/आदेश से,  
सहायक पंजीकार  
आयकर अपीलीय अधिकरण, राजकोट