

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 641/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2012-2013

Shri Tariqrashid M. Munshi, 18, Muslim Society, Navrangpura, Ahmedabad. PAN: ACCPM8665P	Vs.	I.T.O, Ward-5(2)(4) Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Vipul Khandhar, A.R
Revenue by :	Shri Deelip Kumar, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **20/01/2020**

घोषणा की तारीख / **Date of Pronouncement**: **13 02/2020**

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals) Ahmedabad-5, dated 03/01/2017 (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s. 144 r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 12/02/2016 relevant to the Assessment Year 2012-2013.

The assessee has raised the following grounds of appeal.

1. *The learned CIT (Appeal-5) erred in passing the order by confirming addition of Rs.828354/- u/s.50C of IT Act, 1961.*
2. *The learned CIT(Appeals-5) erred in passing the order by confirming addition of Rs.3331563/- being unexplained cash credit.*
3. *The learned CIT (Appeal-5) erred in passing the order by confirming addition of Rs.304500/- being unexplained creditors.*
4. *The learned CIT(Appeal-5) erred in passing the order by confirming addition of Rs.140285/- being unexplained addition in capital.*
5. *The learned CIT (Appeal-5) erred in passing the order by confirming disallowance of Rs.53625/- being claimed u/s.80C of IT Act, 1961.*

Your appellant prays for leave to add, to alter and/or to amend the above ground before the final hearing of the appeal.

2. On perusal of the record we note that the appeal filed by the assessee is late by 358 days. The assessee in this regard submitted that he has shifted to Pune for his employment and therefore he could not file the appeal within the time prescribed under the Act. Accordingly assessee prays before us for the condonation of delay and filed the application thereto.

3. At the time of hearing neither the Ld.AR nor Ld. DR brought to our notice about such delay in filing the appeal by the assessee.

4. However, the Ld.AR at the time of hearing submitted that the assessee could not appear before the AO and "Ld.CIT (A)" due to shifting his employment as contended in the condonation petition. Therefore the Ld.AR prayed before us to set aside the matter to the file of the AO for fresh adjudication as per the provision of Law.

5. On the other hand Ld. DR raised no objection in case the matter is set aside to the file of the AO for fresh adjudication as per the provision of Law.

6 We have heard the rival contentions of both the parties and perused the relevant materials available on record. Admittedly, the onus lies on the assessee to

file the appeal within the time. But the provision of section 253(5) of the Act authorizes us to condone the delay if the appeal was not presented by the assessee within the time due to some unavoidable reason. In the present case we find that the assessee could not file the appeal due to change in the place of employment i.e. from Ahmedabad to Pune. The Revenue has not brought anything on record contrary to the contention of the assessee justifying the delay in filing the appeal. Therefore, we presume content of the application filed by the assessee is correct despite of the fact that the condonation petition was not supported with the corroborative evidences for shifting employment from Ahmedabad to Pune. We are not ignorant to the fact that the assessee should be penalized for the default committed by him for not presenting the appeal in time but in our considered view the penalty should be commensurate to the default committed by him. Thus in the interest of justice and fair play we impose the cost upon the assessee for Rs. 5000/- for not presenting the appeal within the prescribed time. Accordingly, the assessee is directed to deposit cost of Rs.5000/- in the Income Tax Office.

6.1 In view of the above, we condone the delay in filing the appeal by the assessee as discussed above and proceed to decide the issue on merit.

6.2 We further note that the assessee has not appeared before the authorities below. Hence, the additions were made by the AO which were subsequently confirmed by the "Ld.CIT (A)" without hearing the assessee. Thus it is transpired that the impugned addition has been made and sustained without considering the relevant evidences which might result recovery of the taxes on the additions which are not sustainable in the eyes of Law. Indeed, the primary onus lies on the assessee to co-operate in the proceedings before the authorities below. In case he does not do so he deserve to be penalized. Again we feel that the penalty to be imposed upon the assessee should be commensurate to the default committed by him. As such we are of the view that the assessee should not suffer for his non-appearance for the addition of the income which is not sustainable under the Act.

Undoubtedly, the additions have been made and sustained by the respective authorities merely on the reasoning that the assessee failed to provide the supporting evidences which might result in the recovery of the tax with respect to the additions which are not liable to tax. Accordingly in the interest of justice and fair play we are inclined to set aside the order of the "Ld.CIT (A)" for fresh adjudication as per the provision of Law to the file of the AO. However, we are of the view that the assessee deserve to be penalized for non-appearance before the authorities below. Accordingly we impose penalty of Rs.5000/- upon the assessee to deposit the same in the Income Tax Officer before the commencement of his proceedings before the AO. We further direct the assessee to co-operate in the proceedings before the AO and furnish all the requisite documents in advance before him.

6.3 Accordingly, we set aside the order of the "Ld.CIT (A)" to the file of the AO for fresh adjudication in accordance to the provision of Law. Hence the grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Court on 13/02/2020 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
VICE PRESIDENT**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 13/02/2020
Manish/TC Nair

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//True copy//

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad