

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

श्री सिद्धार्थ नौटियाल, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1814/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2018-19

Nikanth (Narol) Co-op. Shops & Off Society Limited 299 & 230/3 Paiki Opp. Gokul Petrol Pump Narol Char Rasta Ahmedabad - 382 405 (Gujarat)	<b>बनाम</b> <b>/</b> <b>v/s.</b>	The Income Tax Officer Ward-1(1)(1) Ahmedabad - 380 015
<b>स्थायी लेखा सं./PAN: AABAN 2595 B</b>		

(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Ms. Preyashi Tated, AR	
Revenue by :	Shri B.P. Srivastav, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 21/01/2025  
घोषणा की तारीख /Date of Pronouncement: 23/01/2025

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) - Delhi [hereinafter referred to as "CIT(A)"], dated 04.09.2024, for the Assessment Year (AY) 2018-19, confirming the *ex-parte* assessment order passed under Section 147 r.w.s. 144 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dated 19.03.2023, by the Income Tax Officer, Ward 1(1)(1), Ahmedabad [hereinafter referred to as "AO"].

**Facts of the Case:**

2. The AO received information from the reporting authority regarding high-value transactions undertaken by the assessee, wherein immovable properties were sold for an aggregate consideration of Rs.60,51,000/- during FY 2017-18. Based on this information, the AO recorded reasons to believe that income chargeable to tax had escaped assessment and issued a notice under Section 148 of the Act on 30.03.2022. Despite multiple notices issued under Section 148 and 142(1), dated 29.08.2022, 14.10.2022, 25.11.2022, and 05.01.2023, the assessee failed to file any response or furnish the return of income. The AO passed an order under Section 147 r.w.s. 144 of the Act, treating the entire sale consideration of Rs.60,51,000/- as Long-Term Capital Gains (LTCG) and adding it to the total income of the assessee. Additionally, penalty proceedings under Section 270A of the Act for underreporting of income and fees under Section 234F of the Act for non-filing of return were initiated.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). However, the appeal was delayed by 18 days. The assessee submitted that the delay occurred because the chairman of the appellant society was illiterate and unaware of the legal procedures, and the order was received by speed post only after the time for compliance had passed. The CIT(A) rejected the condonation of delay, holding that the reasons provided were vague and unsupported by evidence. The CIT(A) further observed that the assessee failed to appear during appellate proceedings, despite notices being issued for hearings on multiple occasions. The CIT(A) dismissed the appeal for non-prosecution and upheld the addition made by the AO.

4. Therefore, the assessee is in appeal before us with following grounds of appeal:

- 1. The order passed by the Ld. CIT (A) is is. bad and illegal as it is in violation of principle of natural justice as no opportunity was given to assessee for explaining reason for condonation of delay.*
- 2. The Ld. CIT(A) has erred in law and on facts in not condoning delay in filling appeal.*
- 3. The Ld. CIT (A) has erred in law and on facts in upholding addition made by the Ld. AO of Rs.60,51,000/- for sale of immovable property.*
- 4. The appellant Craves liberty to add, amends, alter or modify all or any grounds of appeal before final appeal.*

5. During the course of hearing before us, the Authorised Representative (AR) of the assessee submitted that the assessee did not receive the statutory notices issued by the AO and the CIT(A) and, therefore, could not make submissions at either stage. It was further argued that the assessee became aware of the proceedings only upon receipt of the CIT(A)'s order by speed post. The AR assured us that the assessee is now willing to furnish all necessary details and evidence if a fresh opportunity is granted.

6. The Departmental Representative (DR) submitted that the assessee failed to comply with statutory notices at all stages of the proceedings. However, the DR admitted that the present appeal before us was filed within the prescribed time limit.

7. We note that the assessee claimed non-receipt of notices issued by the AO during the assessment proceedings as well as by the CIT(A) during appellate proceedings. However, the assessee has not provided any evidence

to substantiate these claims. The principle of natural justice requires that a party be given a fair opportunity to present its case. In the present case, the assessment was completed ex-parte under Section 147 r.w.s 144 of the Act, and the CIT(A) also dismissed the appeal without adjudicating the matter on merits. The delay of 18 days in filing the appeal before the CIT(A) was attributed to the illiteracy of the appellant society's chairman and lack of awareness about legal procedures. While the CIT(A) rejected the condonation of delay, we are of the view that procedural technicalities should not come in the way of substantial justice. It is settled principle that the Courts should adopt a liberal approach while condoning delays to advance the cause of justice.

7.1. The AO added Rs.60,51,000/- as LTCG without considering whether the assessee received any consideration for the sale of immovable properties. The assessee in the statement of facts submitted before CIT(A) stated that the land was transferred under a development agreement, and no consideration was received by the appellant, as the developer accounted for the sale proceeds in its books. These claims were not examined during the assessment or appellate stages due to non-cooperation by the assessee.

7.2. In light of the above, we find it appropriate to restore the matter to the file of the AO to provide the assessee with a fair opportunity to present its case and furnish relevant evidence, including the development agreement and other supporting documents.

7.3. However, it is observed that the assessee's repeated non-compliance during assessment and appellate proceedings caused unnecessary litigation

and wastage of resources. As a deterrent, we impose costs of Rs.5,000/- on the assessee, payable to the Income Tax Department, before the commencement of fresh proceedings.

7.4. In view of the foregoing, we set aside the order of the CIT(A) and restore the matter back to the file of the AO for fresh adjudication. The AO is directed to provide the assessee with an adequate opportunity of being heard and to consider all submissions and evidence furnished by the assessee.

7.5. The assessee is directed to ensure compliance with all notices issued during the fresh proceedings and to deposit the costs of Rs.5,000/- to the Income Tax Department as a condition for fresh adjudication.

8. In the result, assessee's appeal is allowed for statistical purposes subject to the above directions.

**Order pronounced in the Open Court on 23<sup>rd</sup> January, 2025 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated

23/01/2025

टी. सी. नायर, व. नि. स. / T. C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोक्ट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

