

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस. एम. सी' अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" SMC " BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT

ITA No.1963/Ahd/2018  
Assessment Year : 2010-11

Hashesh V.Patel (HUF) 1226 Near Jogni Matag's Mandir Opp. Ashok Colony Vsana, Ahmedabad  PAN:AAFHH 2239 M	Vs	The ITO, Ward-5(2)(1) Ahmedabad
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri S.N. Divatia, AR
Revenue by :	Shri Umesh Agarwal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 25/05/2022  
घोषणा की तारीख /Date of Pronouncement: 08/06/2022

**आदेश / O R D E R**

This appeal filed by the assessee is directed against the order of Ld. Commissioner of Income-tax (Appeals)-6, Ahmedabad [CIT(A)] dated 06/07/2018 passed *ex-parte*, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee, in the present case, is a HUF. Vide an order dated 07/01/2016 passed by the Ld. CIT(A), the addition of Rs.34,44,024/- was deleted in the individual case of Shri Hashesh V.Patel with a direction to make the said addition in the case of assessee; namely, Hashesh V.Patel HUF as the relevant transaction was found to be pertaining to the assessee-HUF. In compliance with the said direction given by the Ld. CIT(A) vide his order dated 07/01/2016, a notice u/s.148 of the Income Tax Act, 1961

(hereinafter referred to as “the Act”) was issued by the Assessing Officer to the assessee-HUF on 31/03/2016. In response to the said notice, the return of income was filed by the assessee on 27/04/2016 declaring total income at NIL. Thereafter, a notice u/s.143(2) of the Act was issued by the Assessing Officer on 24/05/2016 in response to which some of the details required by the Assessing Officer were furnished by the assessee. Thereafter, another notice was issued by the Assessing Officer seeking more details from the assessee. The assessee, however, failed to furnish the same in the stipulated period. The Assessing Officer, therefore, proceeded to complete the assessment on the basis of material available on record and in the assessment so made vide an order dated 30/06/2016, he made an addition of Rs.34,44,024/- to the total income of the assessee on account of Capital Gain arising from the sale of property which was not disclosed in the return of income.

2.1. The addition made by the Assessing Officer on account of Capital Gain was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since there was no compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time-to-time, the Ld. CIT(A) proceeded to dismiss the appeal of the assessee for non-prosecution vide his appellate order dated 06/07/2018 passed *ex-parte*. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenged the impugned order passed

by the Ld.CIT(A) *ex-parte*, the Ld.counsel for the assessee has submitted that none of the notices stated to be issued by the Ld. CIT(A) fixing the appeal of the assessee for hearing from time-to-time was received by the assessee and such non-receipt of notices resulted into non-appearance of the assessee before the Ld. CIT(A) during the course of appellate proceedings. He has also submitted that proper and sufficient opportunity of being heard was not given to the assessee even by the Assessing Officer during the course of assessment proceedings and urged that the matter may be restored to the file of Assessing Officer for making the assessment afresh after giving the assessee a proper and sufficient opportunity of being heard. The Ld.DR, on the other hand, has submitted that proper and sufficient opportunity of being heard has already been given by the Assessing Officer during the course of assessment proceedings as well as by the Ld. CIT(A) during the course of appellate proceedings which the assessee has failed to avail without any sufficient cause.

3.1. After considering the rival submissions and perusing the relevant material on record, I consider it fair and proper and in the interest of justice to give one more opportunity of being heard to the assessee. However, keeping in view the casual and negligent attitude of the assessee especially during the course of assessment proceedings, I impose a cost of Rs.5,000/- on the assessee. Subject to the payment of said cost to be made by the assessee to the Prime Minister's Relief Fund, I set aside the impugned order passed by the Ld.CIT(A) *ex-parte* dismissing the appeal of the assessee for non-prosecution and restore the matter to the file of the Assessing Officer for making the assessment afresh in accordance with law after giving the assessee one more opportunity of being heard. As undertaken by the

Ld.counsel for the assessee at the time of hearing before the Tribunal, the assessee shall make due compliance before the Assessing Officer and shall extend all the possible co-operation in order to enable the Assessing Officer to complete the assessment afresh expeditiously.

4. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

**Order pronounced in the Court on 8<sup>th</sup> June, 2022 at Ahmedabad.**

Sd/-

**( PRAMOD M. JAGTAP )  
VICE-PRESIDENT**

Ahmedabad, Dated 08/06/2022

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)-6, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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