

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1807/Ahd/2018  
(Assessment Year: 2010-11)

Shri Maheshbhai Parshottambhai Patel C/p. Dhananjay M Patel 12-A, Vishrut Part-2, Jiyodiya Road, Anand-380001	Vs.	ITO Ward-3, Anand
<b>PAN No. ARXPP7927P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri B. T. Thakkar, AR
<b>Respondent by :</b>	Shri S. S. Shukla, Sr. DR

<b>Date of Hearing</b>	04.01.2021
<b>Date of Pronouncement</b>	06.01.2021

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the ex-parte order dated 29.01.2018 passed by the Commissioner of Income Tax (Appeals) –4, Vadodara arising out of the order dated 08.3.2016 passed by the ITO, Ward-3, Anand under Section 144 r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2010-11

2. The addition to the tune of Rs. 33,33,334/- made by the Ld. AO on account of long term capital gain confirmed by the Ld. CIT(A) has been

challenged before us. An application for condonation of delay by four months in filing the appeal before us has been filed by the assessee, an NRI who was in USA and came to India only on 10.07.2018. The neighbor of the assessee received the copy of the order passed by the Ld. CIT(A) on 15.02.2018 and only upon arrival of the assessee in India the same was handed over to him on 06.08.2018. The plea taken by the assessee seems to be genuine and hence the delay is condoned.

3. In fact, the appeal of the assessee was dismissed ex-parte in view of the fact that the notice under Section 142(1) though sent to the assessee's residence non-appeared on the date fix for hearing. When the inspector of the Office of the department was deputed on 31.12.2015 to visit the premises of the assessee it was found locked. The said office bearer met the neighbor of the assessee but failed to get any contact number of the assessee. Ultimately the Ld. CIT(A) dismissed the appeal by upholding the order passed by the Ld. AO. The grounds that the assessee was in USA as stated by the assessee for not being able to appear before the Ld. CIT(A) and as reiterated by the Ld. AR seems to be genuine, keeping in view of the certificate of registration of the overseas citizen of India as authenticated by the Vice Consul, Consulate General of India, Houston and other relevant documents as on record before us.

4. In the present facts and circumstances of the case we, therefore, find it fit and proper to give a further opportunity of being heard to the assessee in adhere to the principal of natural justice and thus we allow the appeal by setting it aside to the file to the Ld. AO to consider the matter

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afresh upon giving an opportunity of being heard to the assessee and upon considering the relevant documents on record or any other document and/or evidence which the assessee may choose to file at the time of hearing of the matter. Hence, the assessee's appeal is allowed for statistical purposes.

5. In the result, assessee's appeal is allowed for statistical purposes.

<b>This Order pronounced in Open Court on</b>	<b>06/01/2021</b>
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Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 06/01/2021  
TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अद्येषित/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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad