

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No. 1322/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

Sudhakar Devappa Manere,
Ward No.9, Block No.34A,
Sahwas, Industrial Estate,
Ichalkaranji – 416 115
PAN : AAZPM7738C

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-4,
Ichalkaranji

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1223/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

ITO, Ward-4,
Ichalkaranji

.... अपीलार्थी/Appellant

Vs.

Sudhakar Devappa Manere,
Ward No.9, Block No.34A,
Sahwas, Industrial Estate,
Ichalkaranji – 416 115
PAN : AAZPM7738C

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal, CIT-DR

सुनवाई की तारीख / Date of Hearing : 05.01.2018	घोषणा की तारीख / Date of Pronouncement: 10.01.2018
---	---

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

These are cross appeals filed by the Assessee and Revenue involving Assessment Year 2011-12. They are filed against the order of CIT(A) 1 & 2, Kolhapur dated 01-06-2015.

2. **Condonation of delay** : There is delay of 67 days in filing the appeal by the assessee. Before us, Ld. AR for the assessee drew our attention to the Affidavit dated 20-12-2017 filed by the assessee and requested for condoning the said delay. The assessee in the affidavit stated that he is not aware of the income-tax law and intricacies of the same. It is submitted that, due to his old age, the filing of appeal went out of his mind and therefore, he could not file the appeal within the stipulated time. Further, the delay is not due to negligence or disrespect to law. Thus, Ld. AR for the assessee prayed for condoning the delay, admit the appeal and decide the issues on lines of the appeals in the cases of Smt. Sushama Manohar Zole (ITA Nos.386 & 702/PUN/2015 & CO No.78/PUN/2017).

3. Ld. DR opposed the submission of the assessee's Authorised Representative dutifully and relied on the orders of the AO/CIT(A).

4. On hearing both the sides on the issue of condonation of delay, we find the delay in filing of the appeal before the Tribunal is very small. The reasons mentioned by the assessee in the affidavit are also considered favourably. We find there is no dispute on the status of the assessee, being a Senior Citizen. In principle, the assessee shall not gain by not filing the appeals against the unfavourable decisions of the CIT(A). Therefore, the delay of 67 days in filing the appeal is condoned and the appeal is admitted for adjudication. Accordingly, the Ground Nos.1 & 2 of the assessee's appeal are allowed.

5. Grounds raised by the Assessee and the Revenue are extracted as under :

Grounds by Assessee :

"1. On the facts and circumstances of the case and in law the delay occurred in filing this appeal was supported by reasonable cause as during the period the appellant-assessee was prevented by reasonable cause to file the appeal. That no charge of malafides is attributable to the assessee. The delay be condoned and the appeal be admitted for adjudication in accordance with the provisions of law. The detailed affidavit will be filed at the time of the hearing of the appeal.

2. On the facts and circumstances of the case and in law and since the appeal has been filed by the Department against the order of CIT(A) and the assessee desirous of keeping the issues involved alive the assessee has filed this appeal. The delay be condoned and the appeal be admitted for adjudication. (Refer Dy. CIT vs. BMC Software (India)(P) Ltd., ITAT Pune Bench reported as (2015) 172 TTJ (Pune) 692.

3. On the facts and circumstances of the case the CIT(A) erred in not accepting the source of the investment made by the appellant during the year under appeal to the extent of Rs.30,75,315/- represented by the following:

a. Amounts received against sale of property of Rs.20,00,000/- from Mr Manohar Manere.

b. Balance of Rs.10,75,315/- being the savings made by the appellant from year to year which were just possible for him to raise for the required investments considering the standing of the appellant and his various activities."

Grounds by Revenue :

"1. On the fact and in the circumstances of the case and in law, the CIT(A) erred in restricting the addition made on account of unexplained investment of Rs. 88,33,852/- to Rs. 30,75,315/- ignoring the facts/findings brought out by the AO for making the disallowance.

2. On the facts and in the circumstances of the case and in law, the CIT(A) is not justified in holding that the Assessing Officer considered entire payment including of earlier year in A. Y. 2011-12, when the AO has rightly excluded such amounts of investments made in earlier year to arrive at unexplained investment in AY 2011-12.

3. On the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that the Assessing Officer made addition to the extent of amount which remained satisfactorily.

4. The appellant prays that the order of the CIT(A) be vacated and that of the AO be restored."

6. Briefly stated relevant facts are that assessee is an individual and filed the return of income on 07-12-2002 declaring income of

Rs.2,25,980/-. Assessee declared income from house property at Rs.56,213/- and agricultural income of Rs.1,47,775/-. Assessee along with 2 other owners (Shri Jagonda Kalgonda Patil and Smt. Sushama Manohar Zole) purchased a land for Rs.4,31,48,000/- situated at S.Nos. 78 and 79, Mouje Kabnoor, Tal. Hatkanangale, Dist. Kolhapur. Assessee's share is 1/3rd in property and his investment in the said land was to the tune of Rs.1,43,82,667/-. During the scrutiny assessment u/s.143(3) r.w.s. 147 of the Act, AO found that the cost of stamp duty amounting to Rs.10,88,640/- and registration charges amounting to Rs.31,840/- totalling to Rs.11,20,480/- were not reflected. Thus the assessee's share of 1/3rd on this amount works out to Rs.3,73,493/- remains unexplained. Assessee was asked to furnish the complete bifurcation of sources of funds in connection with the said land transaction. Rejecting all the details furnished by the assessee and the explanation of the assessee the AO determined the assessed income at Rs.88,33,852/- as unexplained investment u/s.69 of the Act.

7. In the First Appellate proceedings, the CIT(A) partly confirmed the said addition as per the discussion given in Para Nos. 5 & 6 of his order.

8. Aggrieved with the order of the CIT(A) the assessee as well as the Revenue are in appeal before us with the extracted above.

9. We heard both the sides on this issue and perused the orders of the Revenue. We find the facts and issues and arguments of the present appeal are identical to the facts of Smt. Sushama Manohar Zole, who is the Co-owner of the property under dispute. In the appeals filed Smt. Sushama Manohar Zole, the Tribunal vide ITA Nos. 386 and 702/PUN/2015 & CO No.78/PUN/2017 on 05-01-2018 remanded the issue

to the file of CIT(A) with certain directions. For the sake of completeness of this order, we proceed to extract the operational paragraphs of the order of the Tribunal which reads as under :

"7. On hearing both the sides and perusing the orders of the Revenue authorities, we have noticed that the order of CIT(A) on the addition of Rs.65,73,852/- cannot be considered as a speaking order qua the said cash transactions or the source of cash and the other amounts received by the assessee from various persons. CIT(A) order is also erroneous to the extent of his finding in Para No.5 of his order. The details given by the CIT(A) in Para No.6 in our opinion constitutes a very cryptic and non-speaking order. As such, the figures appearing in Para No.6 are found to be not in tune with the figures appearing in the Table given in Para No.5.5 of the re-assessment order. There is need for the CIT(A) to explain in his order bringing clarity. Therefore, we are of the considered view that the entire issue of addition of Rs.65,73,852/- needs to be remanded to the file of CIT(A). Therefore, we direct the CIT(A) to adjudicate this issue afresh and pass a speaking order considering each of the cash transaction received by the assessee which formed the source for the investment in the open land. If necessary, he may call for a remand report as per the rules and procedures. CIT(A) shall hear the assessee as per the rules. Accordingly, the grounds raised in all these appeals are allowed for statistical purposes.

10. From the above, it is evident that the appeal in respect of the Co-owner Smt. Sushama Manohar Zole of the same property in question was remitted back to the file of CIT(A) for deciding the issue afresh and for want of a speaking order as per the provisions of section 250 (6) of the Act after granting reasonable opportunity of being heard to the assessee. Accordingly, the grounds raised by the Assessee and the Revenue are allowed for statistical purposes.

11. In the result, the appeals filed by the Assessee and the Revenue are allowed for statistical purposes.

Order pronounced in the open court on this 10th day of January, 2018.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 10th January, 2018
सतीश

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-1 & 2, Kolhapur
4. CIT-1 & 2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench"
Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune