



ITA No.895/Mum/2019  
Nizamuddin Abdul Aziz Khan  
Assessment Year :2015-16

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.895/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2015-16)

<b>Nizamuddin Abdul Aziz Khan</b> 301, Alkarim Apartment 4A, Pilla Village, Bandra (W) Mumbai- 400 050.	<b>बनाम/</b> Vs.	<b>Income Tax Officer-23(2)(4),</b> C-10, Pratyaksh Kar Bhavan Bandra Kurla Complex Bandra, Mumbai- 400 051.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AAEPK-1779-L</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

<b>Assessee by</b>	:	S/Shri Prakash Pandit & Kalpesh Turalkar-Ld. ARs
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik-Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	15/01/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	15/01/2020

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2015-16 contest the order of Ld. Commissioner of Income-Tax (Appeals)-33, Mumbai, [in short referred to as ‘CIT(A)’], *Appeal No. CIT(A)-33/Rg.23/55/2017-18 dated 27/12/2018*. Although the assessee has raised multiple grounds of appeal, however, Ld. AR drew our attention to ground No.2, to submit that Ld. CIT(A) refused to admit



the additional evidences submitted by the assessee during the course of appellate proceedings in support of alternative claim u/s 54F. The Ld. AR also submitted that the assessee seek to raise an additional ground of appeal before the Tribunal with respect to admissibility of claim for exemption u/s 54F. *Au Contraire*, Ld. DR drew attention to para-8 of impugned order to submit that the assessee did not bother to file requisite application as per Rule 46A and therefore, the same were rightly not considered by Ld. CIT(A).

2. Facts on record would reveal that the assessee being resident individual was assessed for year under consideration u/s 143(3) on 27/12/2017. The assessee received an amount of Rs.4 Crores on sale of certain land and claimed the same to be exempt from tax, being sale proceeds from agricultural land. However, upon examination of documentary evidences including municipal records, Ld.AO reached a conclusion that the said land was falling within the definition of capital asset and hence, chargeable to tax. Accordingly, Long-Term Capital Gains of Rs.4 Crores was brought to tax.

3. Before Ld. CIT(A), the assessee while pleading for acceptance of claim, made an alternative submission that it purchased a new property for Rs.3 Crores out of sale proceeds and therefore, it was entitled for deduction u/s 54F. However, as pointed out by Ld. DR, the assessee did not bother to file application justifying admission of fresh claim as per Rule 46A. The assessee failed to respond to the notices, issued in this regard. Accordingly, the addition evidences and fresh claim was rejected.



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4. Upon due consideration of factual matrix as enumerated in preceding paragraphs, it transpires that despite being provided with sufficient opportunity, the assessee remained negligent in pursuing its additional claim and neglected the same in a very casual manner. However, before us, the assessee has taken same alternative plea of admission of fresh claim and additional evidences. Keeping in view the conduct of the assessee, the bench formed an opinion that in the interest of the justice, the fresh claim was to be admitted, however, upon payment of cost of Rs.25,000/-. Accordingly, the assessee is directed to deposit the same within 15 days from the date of receipt of this order to Legal Aid Authority, Mumbai. Upon payments as aforesaid, the appeal would stand remitted back to the file of Ld. CIT(A) for admission of fresh claim / additional evidences with respect to assessee's alterative claim u/s 54F. The Ld. CIT(A) is directed to admit and re-adjudicate the same after examination / verification of documentary evidences with a direction to the assessee to substantiate the same. The proof of payment shall be furnished to Ld. first appellate authority. Needless to add that failure to pay the cost as aforesaid would result into automatic dismissal of the appeal.

5. The appeal stands partly allowed for statistical purposes.

*Order pronounced in the open court on 15<sup>th</sup> January, 2020.*

**Sd/-**

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 15/01/2020  
Sr.PS, Jaisy Varghese



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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**