

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
(Through Virtual Hearing)

ITA No.260/Hyd/2017		
Assessment Year:2007-08		
A. Vimala, Hyderabad. PAN: BNWPA 7902 B (Appellant)	Vs.	Income Tax Officer, Ward-8(3), Hyderabad. (Respondent)
Assessee by:		Shri A. Srinivas
Revenue by:		Smt. M. Narmada, DR
Date of hearing:		15/09/2020
Date of pronouncement:		17/09/2020

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT (A)-2, Hyderabad in appeal No. 0131/2015-16, dated 30/09/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY: 2007-08.

2. The assessee has raised six grounds in her appeal which are extracted herein below for reference:-

"1. *The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.*

2. *The appellant submits that the right and claims in respect of the property is a capital asset and the Appellate Commissioner erred in confirming the stand of the AO that the appellant had no right over the property.*
3. *The appellant submits that the amount received is a capital receipt on account of relinquishment of her claims and rights in the property, and the Appellate Commissioner erred in coming to a conclusion that the amount received was not a capital receipt.*
4. *The appellant submits that the right in the property is a capital asset within the meaning of section 2(14) of the Income Tax Act, and the cost of acquisition being NIL the Appellate Commissioner erred in coming to a contrary opinion.*
5. *The Appellate Commissioner erred in commenting on the assessee in Para No. 6 of the appellate order and the same may be deleted.*
6. *Any other ground which the assessee might urge either at or before the date of hearings.”*

3. At the outset, Ld. AR submitted before us that there is a delay of 33 days in filing the appeal before the Tribunal. In this regard, Ld. AR brought our attention towards the affidavit filed by the assessee seeking condonation of delay wherein the reason for not filing the appeal within the prescribed time limit was explained. For reference, the relevant portions from the affidavit is extracted herein below:-

“1...

2.....

3. *The appellate order was received by me on 16/11/2016 and the appeal before the Hon’ble Tribunal was to be filed within 60 days from the said date.*
4. *I have sent the order and relevant papers to the office of Sri Ayyadevara Srinivas, Chartered Accountant for*

*the preparation and filing of the appeal. However, the same could not be filed in time and there was a delay of 33 days in filing of the same.*

5. *The above delay is due to the fact that Sri Ayyadevara Srinivas was not keeping good health and was frequently on bed rest.*
6. *I submit before the Hon'ble Tribunal that the delay is due to factors beyond my control and due to the ill health of my Authorised Representative.*
7. *I therefore pray that considering the facts and circumstances of my case explained above, the Hon'ble Tribunal may kindly condone the delay in filing of the appeal”*

4. After hearing the submissions of the Ld. AR and on perusal of the affidavit filed by the assessee explaining the reasons for the delay in filing the appeal before the Tribunal, We find merit in the submissions of the assessee that the assessee could not file the appeal before the Tribunal within the stipulated time due to the ill health suffered by her Counsel. Hence, in the interest of justice, We hereby condone the delay of 33 days in the filing the appeal before the Tribunal and proceed to dispose off the appeal on merits.

5. At the outset, the Ld. AR submitted before us that the Ld. CIT (A) has passed ex-parte order without providing proper opportunity to the assessee of being heard. It was therefore pleaded that the matter may be remitted back to the file of the Ld CIT (A) in order to provide one more opportunity to the assessee of being heard. Ld. DR, on the other hand, vehemently opposed to the submissions of the Ld. AR and argued that

proper opportunities had been provided to the assessee however, on the given dates of hearing, neither the assessee nor her Representative appeared before the Ld. CIT (A). It was further submitted that the Ld. CIT (A) had no other option but to pass ex-parte order based on the materials available on record. Hence, it was pleaded that the order passed by the Ld. CIT(A) does not call for any interference.

6. We have heard the rival submissions and carefully perused the materials on record. On examining the facts of the case, We find merit in the submissions of the Ld. DR. The Ld. CIT (A) had posted the case on five occasions i.e., 27/07/2016; 08/08/2016; 16/08/2016; 14/09/2016 and 23/09/2016. However, none appeared on behalf of the assessee before the CIT(A) on the date of hearing. Therefore, the Ld. CIT (A) was left with no other option except to adjudicate the appeal ex-parte based on the material available on record. In this situation, We do not find much strength in the arguments advanced by the ld. AR. However, considering the prayer of the Ld. AR, and in the interest of justice, We hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh on merits by providing one more opportunity to the assessee of being heard. At the same breath, We also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to

pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 17<sup>th</sup> September, 2020.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 17<sup>th</sup> September, 2020.

OKK

Copy to:-

1.	Smt. A. Vimala, C/o. V. Sridhar & Co, 12/2/823/A/78, Geetha Apartments, Santosh Nagar Colony, Mehdipatnam, Hyderabad-500028.
2.	Income Tax Officer, Ward-8(3), Hyderabad.
3.	The Commissioner of Income Tax (Appeals)-2, Hyderabad.
4.	The Principal Commissioner of Income Tax-2, Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard File.