

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR  
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 929/JP/2018  
निर्धारण वर्ष / Assessment Year: 2009-10

Shafika Begum, 320/4, H.A.R. Colony, Char Darwaja, Jaipur.	बनाम Vs.	I.T.O. Ward 5(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJKPB 6970 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (A.O. Report).  
राजस्व की ओर से / Revenue by: Smt. Monisha Choudhary(JCIT)

सुनवाई की तारीख / Date of Hearing : 16/06/2021  
उदघोषणा की तारीख / Date of Pronouncement : 18/08/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This appeal has been filed by the assessee against the order of the Id. CIT(A)-2, Jaipur dated 28/03/2018 for the A.Y. 2009-10, wherein following grounds have been taken:

- "1. In the facts and circumstances of the case and in law, the Id. AO erred in reopening the assessment of the assessee company under section 148 of the Income Tax Act, 1961. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings, being illegal and without any basis.*
- 2. In the facts and circumstances of the case and in law, the Id. AO erred in reopening the assessment of the assessee company under section 148 of the Income Tax Act, 1961 without obtaining proper sanction in accordance with section 151 of the Income Tax Act,*

*1961. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings, being illegal and without any basis.*

3. *In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the Id. AO in invoking the provisions of section 50C. of the Income Tax Act, 1961 and adopting the sale consideration at Rs. 33,26,416 against the declared sale consideration of Rs. 12,89,344. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the sale consideration at Rs. 12,89,344 as evidenced by the sale deed.*
4. *In the facts and circumstances of the case and in law the Id. DVO has erred in calculating the FMV of the property on the date of sale at Rs. 33,26,416 as against the declared sale consideration of Rs. 12,89,344. The action of the Id. DVO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by accepting the sale consideration at Rs. 12,89,344 as declared by the assessee, for computing the Long Term Capital Gain.*
5. *The assessee craves her rights to add, amend or alter any of the grounds on or before the hearing.”*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. There is delay of 60 days in filing the present appeal, from which, an application for condoning the delay has been filed wherein it was stated that the assessee being a very old and illiterate lady suffering from amnesia and is not keeping well. She is a widow and has a son who is also suffering from Cancer disease. At the time of filing of appeal, the son

of the assessee was undergoing medical treatment. Due to the above reason, the appeal was not filed on time. In support the above contention, the assessee also filed an affidavit mentioning the facts regarding her diseases and the diseases of his son.

4. Per contra, the Id. DR submitted that there is a substantial delay of 60 days in filing the present appeal by the assessee and the application so filed by the assessee does not reflect any reasonable cause on the part of the assessee for the delay in filing the present appeal. She accordingly opposed condoning the delay in filing the present appeal.

5. We have heard the rival contentions and pursued the material available on record. There is no dispute and is an admitted fact that there has been a delay in filing the present appeal by 60 day. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there exists a sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient and reasonable cause on her part in not presenting the present appeal within the prescribed time. In the instant case, it has been stated by the assessee that she is an old and illiterate lady suffering from

amnesia and is not keeping well. She is a widow and has a son who is also suffering from Cancer disease. At the time of filing of appeal, the son of the assessee was undergoing medical treatment. Due to which there was delay in filing the present appeal.

6. In case of **Collector, Land Acquisition vs MST Katiji** (Supra), the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption

that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and it does not stand to benefit by resorting to such delay more so considering the fact that it has applied for settlement of present dispute and payment of appropriate taxes. Therefore, in the factual matrix of the present case, we find that there exists sufficient and reasonable cause for condoning the delay in filing the present appeal and as held by the Hon'ble Supreme Court, where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred.

7. In light of aforesaid discussions, in exercise of powers under section 253(5) of the Act, we hereby condone the delay in filing the present appeal as we are satisfied that there was sufficient cause for not presenting the appeal within the prescribed time and the appeal is hereby admitted for adjudication on merits.

8. In this appeal, since no body was appearing for last several dates, therefore, the Bench had directed to serve the notice of the present

appeal upon the assessee through the Id. DR. Today i.e. 16/06/2021, the Id. DR placed on record a report dated 26/04/2021 wherein it has been categorically mentioned that the A.O. has intimated that the assessee has expired approximately 9-10 months ago and her son also died three months after the demise of her mother (the assessee) and there was no any person to have received the above notice.

9. From perusal of the record placed on record, we noticed that there is a delay of 60 days in filing the present appeal and we condone the delay by giving the finding in earlier paragraphs of this order. However, considering the fact that the assessee has already died and her son has also died and there is nobody in the family to receive the notice and even the Revenue has also not placed on record the list of any legal representative who may represent the assessee in the event of her death, therefore, finding no other alternative, we dismiss the present appeal on the account that the assessee had already died and there are no legal representatives who could be brought on record. We, therefore, direct the Revenue that at any stage if the Revenue comes to know with regard to any legal representative of the assessee at any later stage then the same should be brought to the notice of the Bench by moving appropriate application. It is ordered accordingly.

10. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 18<sup>th</sup> August, 2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/08/2021

\*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Shafika Begum, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 5(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 929/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar