

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
MS. S. PADMAVATHY, ACCOUNTANT MEMBER**

ITA No.26/Bang/2021
Assessment Year :2013-14

Shri. Muniyappa Narashimaiah, No.120/1, Hessarghatta Main Road, Bhuvaneshwari Nagar, T Dasarahalli, Bengaluru – 560 057. PAN : ABMPN 5245 R	Vs.	ITO, Ward – 6(2)(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Mahesh Kumar, Advocate
Revenue by	:	Shri. Priyadarshini Mishra, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.04.2022
Date of Pronouncement	:	27.04.2022

ORDER

Per N. V. Vasudevan, Vice President :

This is an appeal filed by the assessee against order dated 30.11.2017 of CIT(A),Bengaluru – 6, Bengaluru, relating to Assessment Year 2013-14.

2. There is a delay of 1065 days in filing this appeal. The appeal before the Tribunal has to be filed within 60 days from the receipt of the order of the CIT(A). There is no evidence to indicate the date of service of the order of CIT(A) to the assessee. Perusal of Form No.35 filed by the assessee before the CIT(A) that the address for service has been given as the assessee’s address as given in the appeal before the Tribunal. On scrutiny of the CIT(A) folder, it appears that immediately after the date of the order of the CIT(A), the order was dispatched. Therefore, the date of service of the impugned

order of the assessee has to be construed as in the first week of December, 2017. In fact, in Form No.36 filed before the Tribunal, the assessee has left the date of service of the impugned order as December, 2020, without specifying any date. Be that as it may, the delay in filing the appeal has been computed by the assessee at 1065 days. The assessee has also contended that it did not receive the impugned order of the CIT(A). It is only after downloading the impugned order from the web portal of the Department, the assessee filed the present appeal and hence there is no delay in filing the appeal.

3. The reasons for the delay in filing the appeal has been mentioned in the application for condonation for delay by the assessee before the Tribunal. It has been stated therein that one Shri. Ramakrishna Reddy, CA, was engaged by the assessee to handle the aforesaid assessment. It appears that the assessee's land at Sy. No.60/3A-1, Yeshwanthpur, measuring an extent of 7.08 Guntas (hereinafter referred to as 'Property') was compulsorily acquired by Bangalore Metro Rail Corporation Ltd., (BMRCL) for the purpose of metro project. The assessee was paid initial compensation of Rs.1,68,27,330/- in the previous year relevant to Assessment Year 2012-13. In so far as Assessment Year 2013-14 is concerned, the assessee received enhanced compensation of Rs.44,77,379/-. The assessment for Assessment Year 2012-13 was concluded by the AO on 30.09.2016. In so far Assessment Year 2013-14 is concerned, on 11.03.2016 the AO passed an Order of Assessment in which he denied the benefit of deduction under section 10(37) of the Act to the assessee and also the benefit of deduction under section 54 of the Act. In so far as Assessment Year 2012-13 is concerned, the assessee's claim for deduction under section 10(37) of the Act to the extent of Rs.31,57,473/- was denied by the AO for Assessment Year 2012-13 dated 30.09.2016 was revised by the CIT(A) under section 263 of the Act by an

order dated 26.11.2019. Pursuant to the said order under section 263 of the Act, an Order of Assessment under section 143(3) r.w.s. 263 of the Act was passed by the AO on 26.11.2019 and in that order, the exemption under section 54B of the Act withdrawn by the AO.

4. It appears that Shri. Ramakrishna Reddy, CA, who was handling the case of the assessee died and his children referred the case of the assessee to one Shri. Shiva Prakash, CA. In so far Assessment Year 2012-13 is concerned, it appears that the assessee availed of the benefit of Vivad Se Vishwas Scheme, 2020. In so far as Assessment Year 2013-14 is concerned, the assessee was in the dark as to the stage of proceedings before the CIT(A). It has been submitted that the assessee is an agriculturist and is not aware of the intricacies of tax litigation and is wholly dependent on income tax practitioner who was guiding the assessee in such matters. The case was ultimately handed over to one Shri. B. S. Prakash and Co., Chartered Accountants. Mr. B. S. Prakash, Proprietor of the CA firm has filed a confirmation letter before the Tribunal pointing out that the assessee took back the files for Assessment Year 2012-13 from the CA and that he was under the impression that even files relating to Assessment Year 2013-14 were also returned but when the present Counsel approached him, he could trace the files for Assessment Year 2013-14 and handed over the same to the present Counsel on 09.04.2022.

5. In so far as filing of appeal before the Tribunal for Assessment Year 2013-14 against the impugned order of the CIT(A) is concerned, the assessee was under the bonafide impression that an appeal has already been filed before the Tribunal. It was submitted that the present counsel handling appeal for AY 2012 -13, applied for vivad se vishwas on 24/12/2020 thereby had reset the password of an assessee hence had a checking the web portal of

assessee and found that the order has been passed under section 250, and uploaded on web portal, and informed the appellant that the Id. CIT(A) has dismissed appeal partly erroneously and the same has to be appealed before ITAT along with condonation of delay, and only thereby the Appellant can apply either for Vivad se vishwas or contest the case (in case the scheme is denied). Hence the present application for condonation of delay.

6. It has been submitted that appellant-petitioner were under bona-fide belief that the date for hearing is not fixed and the matter has not yet posted for further hearing/ or already appealed before this Honourable Tribunal (and completely relied on previous AR). Further the erstwhile CA has attained lotus feet, and the assessee was under impression there is only one appeal (and not two years), being compensation on single land acquisition. It has also been submitted that there is delay compare to date of order (and date of knowledge being December 2020). However with abundant caution the appellant is filing delay assuming that he/ his erstwhile AR might have misplaced (received if any). The Applicant submits that due to above stated fact there is delay of 1065 days (excluding 60 days), and covid period limitation extension by Karnataka high court is not considered (if considered the delay reduced to 825 days).

7. It has been submitted that if this application for condonation of delay in filing the appeal is not allowed, the Applicant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition vs. MST. Katiji & Others (1987) 167 ITR 471 Concord of India Insurance Co. Ltd., Vs Smt. Nirmala Devi and

Others 118 ITR 507.Radha Krishna Rai Vs. Allahabad Bank & Others [2000]
9 Supreme Court Cases 733.

8. Learned DR opposed the prayer of the assessee for condoning of delay and in this regard placed reliance on the decision of the Hon'ble Madras High Court in the case of T. Lakshmi CMP No.10954/2021 wherein the Hon'ble Madras High Court refused to condone delay in filing the appeal and has pointed out that condonation of delay is an exception and the discretion to condone delay is to be exercised discretely. Condoning the long delay in routine in a mechanical manner and is not a good practice.

9. We have carefully considered the application for condonation of delay. The first point which we notice is that the assessee is an agriculturist and a former aged about 70 years. He cannot be expected to be conversant with the legal and tax compliance. The assessee's land has been compulsorily acquired by the government for a public purpose. The assessee wants to claim relief in respect of enhanced compensation which he received in Assessment Year 2013-14. The impugned order of the CIT(A) is dated 30.11.2017 and as we have already observed, the same has been dispatched to the assessee in due course by the office of the CIT(A). Assessee is not in a position to explain as to how this order was not served on him. The fact that the order was dispatched to the address given by the assessee for service of notices is evident from the folder of the CIT(A). The presumption is that the order would have been served on the assessee in due course. Hence, it is not possible to accept the contention of the assessee that the impugned order was not served on him at all.

10. As far as the prayer of the assessee for condonation of the delay is concerned, we do not find that the explanation given by the assessee is cogent. It appears that the assessee as well as the authorized representatives completely lost track of the impugned order of the CIT(A) for Assessment Year 2013-14. It is only when the present Counsel was approached that he took up the matter and on investigation found that there has been omission to file an appeal against the order of the CIT(A) dated 30.11.2017 for Assessment Year 2013-14. Thereupon the required papers were traced and the impugned order downloaded from the official website of the Department. In the given facts and circumstances, we are inclined to accept the reasons for the delay in filing the present appeal. At the outset, we observe that the Hon'ble Supreme Court, in the case of Mst. Katiji (supra), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of Shakuntala Hegde, L/R of R.K. Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Hon'ble Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011 has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal. We are therefore inclined to

condone the delay in filing the appeal and we condone the delay in filing the appeal.

11. As far as the merits of the appeal of the assessee is concerned, the assessee claimed deduction under section 10(37) of the Act. Section 10(37) of the Act provides for exemption when there is compulsory acquisition of agricultural land which is located in an urban area. One of the conditions for application of 10(37) of the Act is that the land should have been used for agricultural purposes 2 years immediately preceding the date of transfer. The assessee was unable to substantiate the use of the land for agricultural purpose that was compulsorily acquired and, in the circumstances, we are of the view that the deduction under section 10(37) of the Act was rightly refused by the Revenue authorities.

12. In so far as the deduction under section 54 of the Act is concerned, there is no dispute that the assessee purchased new property but the deduction under section 54 of the Act is available only when the long-term capital gain is available from the transfer of any residential house. According to the AO, the assessee did not establish there was residential house which was compulsorily acquired by BMRCL. Besides the above, the Revenue authorities also took the view that under section 45(5)(b) of the Act, additional compensation / enhanced compensation is taxable in the year in which the same is received by an assessee. According to the Revenue authorities, deduction under section 54 of the Act cannot be claimed on enhanced compensation and such deduction can be claimed only when capital gain arises out of original compensation received by an assessee. In our opinion, this reason given by the Revenue authorities is not acceptable because section 45(5)(b) of the Act only mentions that enhanced

compensation is chargeable to tax in the year in which the same is received by the assessee and the taxability is under the head “capital gains”. Once an income is assessed under the head “capital gains”, the assessee is entitled to claim as a consequence any deduction that is permissible in law while computing capital gain. Therefore, this reason given by the Revenue authorities in our view is not acceptable.

13. As far as the question whether there existed a residential house in the property that was compulsorily acquired by the BMRCL is concerned, we find that the RTC at page 74A of the assessee’s Paper Book clearly shows existence of a house. The BBMP has issued a khata which is at page 93 of the Paper Book and that clearly shows that the land of 7 ½ guntas or 8164 sq.ft. acquired by the BMRCL included 800 sq.ft. of built-up area RCC. As we have already said this has been described as house in the RTC. It is just clear from the evidence on record that there was a house that was in existence on the property that was acquired and therefore the assessee is entitled for deduction under section 54 of the Act. We, however, find that none of these document evidence was filed by the assessee before the lower authorities. We also find that the CIT(A) has not given any categorical finding with regard to claim of the assessee for deduction under section 54 of the Act. In these circumstances, we are of the view that the issue has to be set aside to the AO for examination of the claim of the assessee under section 54 of the Act in the light of the evidence that has been filed before the Tribunal. We are of the view that the additional evidence filed by the assessee and the Paper Book filed before the Tribunal are all necessary and required for the purpose of proper adjudication of the issue involved in the appeal and hence they are admitted as additional evidence. The issue is remanded to the AO for consideration afresh after affording the assessee opportunity of being heard.

14. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(S. PADMAVATHY)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 27.04.2022.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.