

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH : COCHIN**

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

ITA No.206/Coch/2021
Assessment Year : 2016-17

Mr. Clint Martel Wilfred, ClintDale Clint Dalte, Moolankuzhy, Nazreth, Kerala – 682 002. <b>PAN : ABNPW 6970 H</b>	Vs.	The Deputy Commissioner of Income Tax (Intl. Taxn.), Circle, Kochi.
APPELLANT		RESPONDENT

Assessee by	:	Shri Saroj Kumar Parida, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

Date of hearing	:	07.12.2022
Date of Pronouncement	:	19.12.2022

**ORDER**

*Per Padmavathy S, Accountant Member:*

This appeal is against the order of the CIT(A)-12, Bangalore dated 22.9.2021 for assessment year 2016-17.

2. The only issue arising out of the various grounds raised by the assessee is that the CIT(A) has not adjudicated the appeal filed before him on merits, but has dismissed the appeal on the ground that there is a delay of 5 days in filing the appeal.

3. The brief facts are that the assessee is an individual, filed return of income for AY 2016-17 on 4.1.2017 declaring a long term capital gain of Rs.90,85,063 and interest income of Rs.3,72,522. The assessee's case was selected for scrutiny under CASS and notice u/s. 143(2) was duly served on the assessee. During the year under consideration, the assessee sold a property for a sale consideration of Rs.1,01,40,000. The AO completed the assessment accepting the income returned by the assessee. Later, a rectification order u/s. 154 dated 17.11.2020 was passed for the reason that for the purpose of stamp duty in respect of the property sold by the assessee, the value considered was Rs.1,22,94,000 whereas the assessee has computed the capital gain taking the sale consideration as per the Deed i.e., Rs.1,01,40,000. The assessee contended before the AO that difference of Rs.21,54,000 cannot be brought under the tax net as the property was sold to Corporation of Cochin and there is no scope of unaccounted money. The assessee further submitted that the provisions of section 50C cannot be applied here since the transaction happened with the Govt. entity, Cochin Corporation, and there is no hidden transactions in this case. The AO did not accept the contention and brought to tax the difference amount of Rs.21,54,000. Aggrieved, the assessee filed an appeal before the CIT(A).

4. There was a delay of 5 days in filing the appeal before the CIT(A) and the CIT(A) disposed of the appeal without condoning the delay. Aggrieved, the assessee is in appeal before us.

5. We notice that the assessee has submitted before the CIT(A) that the delay was mainly due to the fact that the assessee is NRI residing at UAE and was travelling overseas. The assessee could not visit India to finalise the appeal and hence the delay. Following the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, we are of the view that there is a reasonable cause for the delay in filing the appeal before the CIT(Appeals) and the Id. CIT(Appeals) ought to have condoned the delay. We therefore condone the delay and remand the appeal to the CIT(Appeals) for fresh adjudication on merits.

6. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on this 19<sup>th</sup> day of December, 2022.

Sd/-  
( N V VASUDEVAN )  
VICE PRESIDENT

Sd/-  
( PADMAVATHY S )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 19<sup>th</sup> December, 2022.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar,  
ITAT, Bangalore/Cochin.