

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1896/Del/2020

निर्धारणवर्ष/Assessment Year: 2009-10

Manish, H.No. 473, Ward No. 17, Badwali, Dhani Near, Kasina House, Hisar, Haryana.	बनाम Vs.	ITO Ward-2, Hisar.
PAN No. ASEPM9249H		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Sunil Mathur, AR
राजस्वकीओरसे /Revenue by	Shri Om Prakash, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	29.12.2022
उद्घोषणाकीतारीख/Pronouncement on	10.03.2023

आदेश /O R D E R

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Gurgaon dated 26.07.2018 for AY 2009-10.

2. The Application of Assessee for Condonation of Delay of 780 days.

The Ld. Counsel of the assessee pressing into service application dated 18.11.2020 seeking condonation of delay of 780 days submitted that due to un-avoidable circumstances and due to dispute with Ms. Ashu W/o Brother Shri Umesh Sharma and her family members, the assessee and his family members were disturbed and busy in handling litigation and court

cases, therefore, appeal could not be filed within a prescribed time limit on or before 19.10.2018 and the same could be filed only on 24.11.2020 and thus, there was a delay of 780 days.

3. The Ld. AR submitted that the delay in filing appeal may kindly be condoned and appeal may kindly be admitted for consideration and adjudication.

4. Replying to the above, the Ld. Sr. DR drawing our attention towards his written submissions filed on 20.10.2022 submitted that there is a substantial delay of 780 days in filing the present appeal by the assessee and the application and affidavit of assessee does not reflect or show any plausible or sufficient cause on the part of assessee for the delay of 780 days in filing the appeal before this Tribunal. Placing reliance on the judgment of Hon'ble Punjab & Haryana High Court in the case of Shri Subodh Prakash Vs. JCIT [2017-TIOL-2249-HC-P&H-IT] and order of the ITAT, Delhi Benches in the case of Mewat Grit Udyog Vs. PCIT [2017-TIOL-2249-HC-P&H-IT] and submitted that in absence of sufficient cause as per requirement of Section 5 of Limitation Act, 1963 the extra ordinary delay of 780 days cannot be condoned. Therefore, appeal may kindly be dismissed in *limine*.

5. On careful consideration of above submission, I am of the view that the assessee has filed copy of first information report filed by one Shri Krishan Dutta S/o Gita Ram against Ms. Ashu Sharma and other eight

accused reveals that there was a dispute between assessee and its family members with Ms. Ashu Sharma and her family members and father of assessee lodged an FIR on 26.10.2016 in police station, Hisar. In this regard counter to the complaint filed by Ms. Ashu Sharma and others against the assessee and his family members these documentary evidences and affidavit of assessee sworn on 29.04.2022 reveals that due to dispute with Ms. Ashu Sharma W/o Brother of assessee Shri Umesh Sharma and assessee's family members were disturbed and busy in court cases. This affidavit has not been controverted by the AO or any competent Authority on behalf of the Revenue. In my humble understanding criminal cases arose out of family and matrimonial disputes create lots of problems and hazardous situation for all the family members and in such a situation the total normal working of family becomes paralyzed. In this situation and in view of above noted facts, I am of the considered view that the cause shown by the assessee explaining the delay of 780 days in filing appeal is sufficient cause as per requirement of provisions of Section 5 of Limitation Act, 1963.

6. In view of foregoing I reached to a logical conclusion that the assessee has successfully demonstrated and established sufficient cause explaining the delay of 780 days in filing appeal before the Tribunal. Therefore, application of assessee for condonation of delay is allowed and appeal is admitted for hearing.

7. The Ld. Counsel of the assessee submitted that the assessee does not want to press ground nos. I, ii and iii, hence, the same are dismissed as not pressed. The remaining effective ground no. IV reads as follows:

iv) "On the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in confirming following action of the Assessing Officer in confirming the addition of Rs.2,00,000/- regarding gift received from father".

The Ld. Counsel of the assessee submitted that during the assessment and first appellate proceedings the assessee consistently submitting that the father of assessee Shri Krishna Dutta is a Pujari in Mandir, he also works as an astrologer and property dealer.

8. The Ld. AR further explained that said source that assessee's father was owner of ancestral agricultural land measuring 6.5 acres approximately in village Kothkala Tehsil Narnaul, Distt. Hisar. The Ld. AR further submitted that his annual income from puja, astrology and property dealer was Rs.1,40,000/- and agricultural income of Rs. 2 lakhs totaling to Rs.3,40,000/- during FY 2008-09. The Ld. AR further submitted that the father of assessee gifted Rs.2,00,000/- on 23.07.2008 out of his past savings and sale proceed of agriculture produced sold by him. Therefore, the gift of Rs.2 lakhs is self explained. The Ld. AR submitted that the assessee has submitted copy of fard jamabandi/Revenue record of his father showing his ownership of 6.5 acres land and AO has not pointed out any doubt, defect or any discrepancy therein, therefore, factum of gift cannot be ruled out. The

Ld. AR submitted that the authorities below have made addition of Rs. 2 lakhs in the hands of assessee without controverting the factum of ownership of 6.5 acres land by the assessee. Therefore, the addition may kindly be deleted.

9. On careful consideration of rival submissions, I am of the view that neither from the assessment order nor from the first appellate order, I am unable to see any findings that the father of assessee does not own 6.5 acres agricultural land. The Ld. CIT(A) in para 6 noted that the assessee has not been able to convince the AO regarding income from agriculture and agriculture income calculated by the assessee are based on presumptions only. The second cause mentioned by the Ld.CIT(A) is that the appellant father should have filed his return of income if he was having taxable income. I am unable to agree with the conclusion drawn by the Ld. First Appellate Authority that in absence of return of income by his father the factum of gift cannot be accepted. I am of the view that when he is earning small income from puja & astrology and earning exempt agricultural income then the requirement of filing of return of income arose only in a situation when his income falls within the purview of taxable limits, merely because a person, giving gift to his son, is not filing return of income, the transaction of gift cannot be doubted particularly when the person giving gift is owing 6.5 acres agricultural land which yielded agricultural produce to him. Finally, I hold that the basis taken by the AO as well as Ld. CIT(A) for dismissing the explanation

of assessee regarding gift of Rs. 2 lakhs from his father is not reasonable, justified and sustainable. Therefore, the same is dismissed. Accordingly, sole effective ground of assessee is allowed and AO is directed to delete the addition.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 10/03/2023

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Dated: 10.03.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi