

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 13/PAT/2022
Assessment Year: 2016-2017**

***Baiju Roy,..... Appellant
S/o. Sukhdev Roy,
Nathupur Paithani,
Phulwarsharif, Beur,
Patna-800002, Bihar
[PAN:BZJPR8947N]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-4(2), Patna,
Central Revenue Building,
Patna-800001, Bihar***

Appearances by:

*Shri Suman Kr. Mishra, Advocate, appeared on behalf of
the assessee*

*Shri Rupesh Agrawal, Sr. D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : May 31, 2023

Date of pronouncing the order : June 02, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17.12.2021 passed for Assessment Year 2016-17.

2. The grounds of appeal taken by the assessee are not in consonance to Rule 8 of Income Tax Appellate Tribunal Rules. They are descriptive and argumentative in nature. The assessee has taken sixteen grounds. However, his grievances revolve around two-folds, namely-

- (a) Id. CIT(Appeals) has erred in not condoning the delay and deciding the appeal on merit.
- (b) Whether capital gain on compensation received by the assessee for compulsory acquisition of agricultural land is leviable in his hands or not.

3. Brief facts of the case are that the assessee has filed his return of income electronically on 15.09.2016 declaring total income of Rs.2,53,190/-.The assessee at the relevant time was working as a Mason. According to the Id. Assessing Officer, Central Government has acquired land for public purposes and the assessee has received compensation of Rs.1,25,05,763/-. He assessed this amount under the head "capital gain" by observing as under:-

"In this regard, this office called for information u/s 133(6) from Land Acquisition Officer, Patna that the land in question was acquired under compulsory by the State Govt./Central Govt. The Land Acquisition Officer has reported vide his letter No.2413 dated 04.12.2018 that the land in question was acquired under general procedure for Patna-Buxar four lane N.H-83. Moreover, an information was also called for from the Circle Officer, Phulwarisharif Patna. It was also reported vide his office letter No.2074 dated 05.12.2018 that the land in question was agricultural land and the same was situated within 3 K.M. of Municipal council. Section 2(14)(iii)(a) and (b) says as follows :

"(iii) agricultural land in India not being, land situate -

(a) In any area, which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) In any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

Section 10(37) also says that being an individual or a HUF, any income chargeable under the head capital gain arising from the transfer of agricultural land, where transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or RBI and such consideration received on or after 01-04-2004.

In view of the above referred sections and on the basis of report received from the Land Acquisition Officer and Circle Officer, the land in question is taxable u/s 45(5) of the Income-tax Act, 1961 as Capital Gain. However, the assessee claimed deduction u/s 54B of Rs. 1,00,00,000/- on account of purchase of agriculture land and Rs.25,05,763/- u/s 54F, out of compensation amount in the ITR during the year under consideration. No documentary evidence was submitted in support of claim of deduction u/s 54B & 54F during assessment proceeding. Further, the assessee turned and claimed exemption u/s 10(37) quoting circular No.36/2016 in his written submission. Further, a show-cause letter dated 29.11.2018 was issued to the assessee for compliance on or before 7.12.2018 as to why not Rs. 1,25,05,763/- received as compensation for acquisition of land be treated as Capital Gain u/s 45(5) of the I.T.Act, 1961 on account of non-production of documentary evidence in support of compulsory acquisition of land in question. Neither assessee filed any explanation nor submitted any documentary evidence in response to show cause notice on this issue.

On examination of the documents/statement & submission of the assessee and on the basis of report received from District Land Acquisition Officer,

Patna and Circle Officer, Phulwarisharif, total income is determined as under:-

(i)	Returned income as shown	:	Rs. 2,53,192/-
	Add. Income from capital gain	:	
	Sale consideration	:	Rs.1,25,05,763/-
	Cost of acquisition	:	Rs. NIL
	Long term capital gain	:	Rs.1,25,05,763/-
	Total income	:	Rs.1,27,58,955/-
		Or	Rs.1,27,58,960/-

Assessed u/s 143(3) of the I.T. Act, 1961 on a total income of Rs.1,27,58,960/-.
Issue Demand Notice, Challan and a copy of the Order to the assessee.

Penalty proceeding u/s 271(1)(c) is also initiated for inaccurate particular of income of Rs.1,25,05,763/-“.

4. Dissatisfied with this assessment order, assessee carried the matter in appeal before the ld. CIT(Appeals). According to the ld. CIT(Appeals), the appeal was time-barred by 150 days. The ld. 1st Appellate Authority has considered the explanation of the assessee but did not find plausible reason to condone the delay. Accordingly the appeal of the assessee is dismissed without deciding the issues on merit. The ld. 1st Appellate Authority has not condoned the delay in filing the appeal.

5. With the assistance of ld. Representatives, we have gone through the record carefully. An application for condonation of delay filed before the ld. CIT(Appeals) is placed before us in the appeal paper. The main reason given by the assessee is that he is an illiterate person working as a labourer. He has no knowledge of computer

or mobile as such, therefore, he was unable to operate e-mail etc. He could not file the appeal well in time. He prayed that delay be condoned and appeal be decided on merit.

6. Ld. D.R., on the other hand, relied upon the finding of the ld. CIT(Appeals) and submitted that the assessee should be diligent in prosecuting his remedies before the Income Tax authorities.

7. We have duly considered the rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression sufficient cause employed in the section has also been used identically in sub-section 3 of section 249 of Income Tax Act, which provides powers to the ld. Commissioner to condone the delay in filing the appeal before the Commissioner. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Honble High Court as well as before the Honble Supreme Court, then, Honble Court were unanimous in their conclusion that this expression is to

be used liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. 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.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. Similarly, we would like to make reference to authoritative pronouncement of Honble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

“Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy

may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss".

9. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Honble Courts are unanimous in their approach to propound that whenever the reasons

assigned by an applicant for explaining the condonation of delay, then such reasons are to be construed with a justice oriented approach.

10. In the light of above, if we examine the explanation of the assessee, then it is to be appreciated that he belongs to a lower strata of the Society from rural background. It is very difficult for him to regularly monitor Mails, etc. He is totally dependent upon his Tax Consultant. The ld. CIT(Appeals) ought to have appreciated this aspect while considering the reasons given by the assessee for not filing the appeal well in time. It is also pertinent to observe that the assessee has not gained anything by making his appeal time-barred. Thus it is not a strategy adopted by the assessee to litigate with the Department. Considering all these aspects, we condone the delay in filing the appeal before the ld. CIT(Appeals).

11. Since the ld. 1st Appellate Authority has not decided the appeal on merit, therefore, ideal situation is to restore all these issues to the file of ld. CIT(Appeals) for adjudication on merit. But a perusal of the assessment order would reveal that it is also a non-speaking order. The ld. Assessing Officer has observed that the alleged agricultural land of the assessee is situated within 3 km. of Municipal Council but he has not deliberated upon

from which Municipality. It is also not discernable when the Income Tax Authority has notified the Municipal limits under the Income Tax Acts. In a given case, the local Municipal limit might have been increased but it should have incorporated by the Income Tax Authorities by issuance of a Notification. Recently when one posted of us was at Ahmedabad had an experience that after Notification issued in 1995, the Income Tax Authorities have not revised the limit, whereas local Municipal Authorities have enhanced the limits, but the distance of 8 km. is being measured from the Notification of the Income Tax Authorities. These factors have not been looked into. The ld. Assessing Officer further observed that the assessee has claimed exemption under sections 54B and 54F, but he has not dealt with those claims. He has not granted the opportunities to the assessee for submission of these evidences. It is also not discernable when he issued 143(2) notice upon the assessee. We have extracted supra the assessment order, which is running only one page. When specifically dealing with all aspects elaborately, we direct the ld. Assessing Officer to again call for a report from the concerned revenue official of the State Government about the exact physical location of the land in dispute. The Revenue Officer should be directed to give Khasra No., Khaitan No. and Kella No. of the land, which was owned by the assessee and acquired by the Central Government. He should also be directed to

pin-point in which Revenue State such land is situated. Reference of the ld. Assessing Officer to the letter of some Circle Officers is totally vague and not reliable. He should deliberate the contents of the letter or should make that letter as a part of the assessment.

12. It is pertinent to note that in case, if we set aside the proceeding to the file of the ld. CIT(Appeals), then it will give rise to multiplicity of the litigation because the ld. CIT(Appals) is a Faceless Authority. It itself cannot collect the evidences from Revenue Officers. It will call for a remand report from the ld. Assessing Officer and one more set of inquiry will be instituted at the level of ld. Assessing Officer. Thus to avoid such exercise, we deem it appropriate that the dispute is to be set aside to ld. Assessing Officer for fresh adjudication. Therefore, we set aside both the orders and restore determination of capital gain, if any, assessable in the hands of the assessee to the file of ld. Assessing Officer. The ld. Assessing Officer is directed to provide opportunity of hearing to the assessee either physically or virtually but decide the issues after hearing the assessee and giving opportunity to lead evidences.

13. With the above directions, the impugned orders are set aside and appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 02.06.2023.

**Sd/-
(Manish Borad)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President**

Kolkata, the 2nd day of June, 2023

*Copies to :(1) Baiju Roy,
S/o. Sukhdev Roy,
Nathupur Paithani,
Phulwarsharif, Beur,
Patna-800002, Bihar*

*(2) Income Tax Officer,
Ward-4(2), Patna,
Central Revenue Building,
Patna-800001, Bihar*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi,*

*(4) Commissioner of Income Tax- ,
(5) The Departmental Representative*

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.