

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1014/MUM/2023 (A.Y. 2010-11)

Mr. Ashok Bhoir 907, Juhu Gaon Sector – 11/1 Behind Marathi School, Vashi PAN: BPBPB5105G	v.	Income-tax Department Ward No. 28(1)(2) Mumbai
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Khushiram Jadhvani
Department Represented by	:	Shri Ujjawal Kumar
Date of Conclusion of Hearing	:	15.06.2023
Date of Pronouncement	:	21.06.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 11.01.2023 for the A.Y.2010-11.

2. Assessee has raised following grounds in its appeal: -

"Ground No.1

Because, order dated: 19/12/2016 passed under Section 144 r.w.s. 147 and dismissal of appeal by CIT(A)[NFAC] under section 250 is wholly without jurisdiction and is bad in law.

Ground No.2

A) Section 4 r.w 48: Because Ld. AO erred in law and facts in assessing income from transfer of assignment of leasehold rights vide tripartite agreement when the same is not liable for tax in view of fact that computation provisions under section 48 fails in the given case

B) Section 4 r.w 45: The consideration received from assignment of leasehold rights is merely realisation of additional compensation on compulsory acquisition of agricultural land by Government of Maharashtra and is thus not liable for tax under the Act.

C Section 56: Because Ld. AO erred in law and on facts is assessing the income of Rs. 1,52,65,588/- under the head Income from other sources when AO himself has observed that the transaction is assessable under head Capital Gains.

D) Section 2(29A) r.w.s. 2(29B): Because Ld. The transaction for the assignment of leasehold rights is from long terms Capital Asset.

E) Section 49: Because Ld. AO erred in law and on facts in not giving benefit of the cost of acquisition of the said two plot at Fair Market Value as on the date of execution of Agreement to Lease.

Ground No. 3 Section 45 r.w 56:

Because the income is over assessed by an amount of Rs.48,15,588/-

The appellant individual craves to leave to add, alter, modify or delete any of the ground."

3. The present appeal is filed by the assessee with a delay of 17 days and assessee also filed an affidavit in this regard and prayed for

condonation of delay. Assessee filed an affidavit dated 23.03.2023 and submitted as under: -

"The Appellant is an individual aged 67 Years and agriculturist in the past years. Since the appellant did not have any income exceeding maximum amount not chargeable to tax it did not file the return of income for the AY 2010-11.

2. Subsequently re-assessment proceeding initiated u/s 147 of The Act, 1961 for the AY 2010-11 and notice u/s. 148 dated: 11/03/2016 was issued.

3. The re-assessment proceeding so initiated got culminated into the re-assessment order dated 19/12/2016 passed u/s 144 r.w.s. 147 of The Act, 1961 by assessing total income of Rs.1,52,65,588/-.

4. Appellant had preferred an appeal against the re-assessment order dated 19/12/2016 passed u/s 144 r.w.s. 147 of The Act, 1961 before the CIT (A) on 25/01/2017.

5. In this regard it is brought to your notice that, appellant was not in receipt of the notices issued during the re-assessment proceedings hence request for the inspection of the assessment record was made vide letter dated 18/10/2021 and Letter dated 10/08/2022. Till date appellant was not granted any inspection of the assessment record. Due to which his compliance before the appellate authority was pending. A copy of the letters requesting inspection of the assessment record has been attached herewith marked as Exhibit: A1 & A2.

6. Subsequently, order dated 11/01/2023 has been passed w/s 250 of The Act, 1961, dismissing the above appeal, came to the knowledge of the appellant on 18/03/2023 at the time of login to the income tax portal for filing of preliminary Submission.

7. As the appellant was unaware of the fact that, appeal filed before CIT(A) got dismissed vide order dated 11/01/2023 hence there is a delay in filing the appeal before your goodself.

8. The due date for filing an appeal before the Hon'ble Bench was 12/03/2023 however appellant is filing an appeal on 29/03/2023, accordingly there is a considerable delay of 15 days hence it is hereby requested to condone the delay of 15 days in filing the appeal."

9. The Appellant shall remain grateful."

4. Ld. DR objected for the condonation of delay and however, he has not filed any submissions against the affidavit as well as the facts described in the above affidavit.

5. Considered the submissions of both parties, it is fact on record that assessee has failed to file the appeal in time and filed the appeal with a delay of 17 days. For the sake of overall justice, the Hon'ble Supreme Court in the case of Collector, Land Acquisition v. MST. Katiju and others, [1987]167 ITR 471, held as under: -

"3. The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy.

4. And such a liberal approach is adopted on principle as it is realized that:

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 and pragmatic manner.

4. 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.

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 the 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."

6. Respectfully following the ratio laid down in the above judgment, we condone the delay in filing the appeal and decide the appeal on merits.

7. At the time of hearing, Ld. Counsel for the assessee submitted that Ld.CIT(A) and Assessing Officer had passed exparte order without providing adequate opportunity of being heard to the assessee. Further, he brought to our notice petition filed before Ld.CIT(A) for admission of additional evidences u/s. 46A of the Act and submitted that Ld.CIT(A) has not considered these additional evidences while deciding the issue, therefore, Ld. AR of the assessee requested that the matter may be restored to the file of the Assessing Officer. For the sake of clarity, petition filed u/s. 46A is reproduced below: -

"PETITION FOR ADDITIONAL EVIDENCE U/s. 46A OF THE INCOME TAX RULES. 1962

The Appellant submits as under:

1. That, vide order passed under section 144 r.w 147 of the Income Tax Act, 1961, Ld. AO has raised a demand of Rs. 89,45,440/- on account of taxing transaction of the assignment of all the rights, title and interest in plot allotted to the Appellant under 12.5% of GES Scheme of Government of Maharashtra in view of compulsory acquisition of agricultural land under Land Acquisition Act, 1894.

2. That, since the Appellant is an illiterate agriculturist from decades it was under bonafide belief and impression that the said transaction is on account of agricultural land and therefore.no tax is payable within the provisions of Income Tax Act, 1961.

3. That, Appellant submits that he was under the bonafide belief that the said transaction is not liable for tax under the provisions of Income Tax Act, being capital receipt in terms of the provisions of Land Acquisitions Act, 1894 since it is in consequence to transfer of lease hold rights acquired by him under 12.5% GES Scheme of Govt. Of Maharashtra.

4. That, the Appellant submits that following records were available with the Ld.AO at the time of passing of said order:

a. The Appellant entered into tripartite agreement dated 11th February, 2010 with Shub Home Developers in respect to plot no. 22, Sector-26 JU/Vashi admeasuring 467.63 Sq.mts

b The Appellant also entered tripartite agreement dated 11th February, 2010 with Marvel Developers with respect to Plot no. 9B Sector- 11 Koparkhairane admeasuring 83.56 Sq.mts.

5. That, now during the Appellate Proceedings, the Appellant wish to place on record documents to substantiate the claim that the transaction is not chargeable to tax such as:-

a. Copy of award u/s 11 of the Land Acquisition Act, 1894 in the Appellants fore fathers case on 7th March, 1980.

b. Copy of Agreement to lease with the Appellant on 11th January, 2010 with respect to Plot-9B Sector 11 Koparkhairane admeasuring 83.56 Sq.mts.

C. Copy of Agreement to lease with the Appellant in respect of plot no-22, Sector-26 JU/Vashi admeasuring 467.63 Sq.mtrs.

d. Copy of understanding with the builder for the assignment of Right, title, interest in the said plot;

e. Fair Market value of above plots as on the date of execution of the Agreement to lease and Tripartite Agreements as mentioned herein.

f. confirmation of Transaction / Consideration amount.

g. Such other documents as the appellant wish to place on record to substantiate its claim.

6. That it is respectfully prayed that in the interest of equity and justice the evidence submitted may kindly be admitted under Rule 46A where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal.

7. That support in this connection appellant wish to place reliance on the decision of Hon'ble Jurisdictional High Court in the case of Smt. Prabhavati M. Shah v. CIT (1998) 231 ITR 1."

8. Ld. DR has no serious objections in sending back the matter to the file of the assessing officer.

9. We have heard the submissions and perused the orders of the authorities below. On a perusal of the additional evidences furnished before Ld.CIT(A). We are of the view that these evidences go to the root of the matter, it needs proper verification at assessment level. These evidences have to be examined by the Assessing Officer as these evidences were not available for verification before the Assessing Officer

at the time of assessment. Thus, we restore all these additional evidences and the issue in hand to the file of the Assessing Officer for denovo assessment in accordance with law. The assessee may file all these evidences before the assessing officer to substantiate its claim. Needless to say that the assessee shall cooperate with the assessment proceedings before the Assessing Officer and the Assessing Officer shall provide adequate opportunity of being heard to the assessee.

10. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st June, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 21.06.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum