

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 356/Bang/2023
Assessment Year : 2015-16

<p>Shri M. Nanda Kumar, By LR Smt. Jayashree R, No. 25, Shankamma Bldg, 9th Cross, Gundappa Gowda Road, Ejipura, Vivek Nagar Post, Bangalore – 560 047. PAN: AMNPM8080H</p>	Vs.	<p>The Income Tax Officer, Ward – 7(2)(3), Bangalore.</p>
APPELLANT		RESPONDENT

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ITA No. 357/Bang/2023
Assessment Year : 2015-16

<p>Shri M. Narendra Kumar, No. 25, Shankamma Bldg, 9th Cross, Gundappa Gowda Road, Ejipura, Vivek Nagar Post, Bangalore – 560 047. PAN: AMNPM8079N</p>	Vs.	<p>The Income Tax Officer, Ward – 7(2)(3), Bangalore.</p>
APPELLANT		RESPONDENT

Assessee by	:	Shri H. Guruswamy, ITP
Revenue by	:	Smt. Priyadarshini Besaganni, Addl. CIT-DR

Date of Hearing	:	22-06-2023
Date of Pronouncement	:	27-06-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals are filed by the assesseees against separate orders dated 12.11.2018 passed by the Ld.CIT(A)-7, Bangalore for A.Y. 2015-16.

2. At the outset, the Ld.AR submitted that there is delay of 1578 days in filing of the present appeals due to the death of the brother of the assessee (Shri M. Nanda Kumar) who was looking after the appeals and who passed away on 15.05.2021. It is submitted that the appeal of the deceased is represented by Smt. Jayashree R and assessee himself together and both these appeals are listed before this *Tribunal* on similar set of facts.

2.1 The assessee has filed condonation petition vide affidavit dated 03.05.2023 seeking the delay to be condoned. The Ld.DR though objected however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeal.

2.2 We have perused the submissions advanced by both sides in the light of records placed before us.

2.3 We note that Shri Nanda Kumar one of the assessee before us who was handling the legal matters for himself as well as his brother Shri M. Narendra Kumar. Upon his demise, the legal heir of Shri Nanda Kumar Smt. Jayashree was not aware of the above facts and therefore a substantial delay was caused in filing the present appeals before this *Tribunal*.

2.4 In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector*

Land Acquisition Vs. Mst. Katiji & Ors., reported in (1987) 167 ITR 471 in support of his contentions.

It is also submitted by the Ld.AR that there is no malafide intention on behalf of assessee in not filing the present appeal within time.

2.5. The Ld.DR on the contrary opposed the delay to be condoned.

2.6. Considering the circumstances under which the delay was caused in filing the present appeal before this *Tribunal* and that nothing contrary could be established by the revenue before us.

2.7. We place reliance on following observations by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 wherein, *Hon'ble Court* observed as under:-

“The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de 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.

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.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

2.8. Considering the submissions by both sides and respectfully following the observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal as it is not attributable to the assessee.

Accordingly, the delay in filing the present appeals in case of both the assessees stands condoned.

3. Brief facts of the case are as under:

3.1 The assessees Shri M. Nanda Kumar and Shri M. Narendra Kumar were running a gym and filed his return of income through e-filing. For the year under consideration both the assessees had filed their returns of income on 07.10.2015 declaring total income of Rs.2,51,000/- in the hands of Shri M. Nanda Kumar and Rs.2,26,290/- in the hands of Shri M. Narendra Kumar.

3.2 The Return of income by M. Nanda Kumar was selected for scrutiny and the Assessment was completed u/s. 143(3) of the Act dtd: 29-12-2017 determining the total income at Rs.1,77,68,187/- as against the declared income of Rs.2,51,000/-. The Ld. AO made addition of Rs. 1,75,17,187/- being the LTCG arising out of a Sale of BDA site No. 1422 situated at HSR Layout, Sector 2, Bangalore along with also the Ancestral Agricultural land measuring 2 Acres 20 Guntas in Sy. No. 54, situated at Chikkanayakanahalli, Varthur Hobli, Bangalore East Taluk.

3.3. The Properties mentioned above were owned by Shri M.Nanda Kumar and his HUF co-parceners being:

- ii. Smt. Roppa.N W/o Narendra Kumar
- iii. Kum. N. Sneha D/o Narendra Kumar

- iv. Kum. N. Chethana D/o Narendra Kumar
- v. Sri. Nanda Kumar S/o Late Munilayappa (Assessee)
- vi. Smt. Jayashree w/o Sri. Nanda Kumar
- vii. Kum. N. Ankitha Nidhi Kumar D/o Nanda Kumar
- viii. Kum. N. Namitha Sarika Kumar D/o Nanda Kumar
- ix. Smt. Nagaveni D/o Late Munilayappa
- x. Smt. Naveetha Kumari D/o Late Munilayappa

3.4. It was stated that all the 10 co-parceners were mentioned in the sale deed dtd: 01-09-2014 and have jointly sold the Ancestral Agricultural land measuring 2 Acres 20 Guntas in favour of M/s. Astro Land Developers for an alleged consideration of Rs.3,00,00,000/- out of which Shri Nanda Kumar and his family members were entitled to Rs. 1,50,00,000/- being the 50 percent of the total Sale Consideration of Rs. 3,00,00,000/-.

3.5. Shri M. Nanda Kumar submitted that the land sold was an ancestral property in which all the 10 family members named above had vested interest being co-parceners of the HUF. Thus each family member was entitled to 1/10th share of the sale consideration amounting to Rs. 30,00,000/- each. Shri M. Nanda Kumar submitted that in the sale deed dtd: 01-09-2014 at page 6 it was mentioned that the Purchaser has paid a sum of Rs.3,00,00,000/- to the Vendors who have confirmed to have received the said sum of Rs.3,00,00,000/-. He had submitted that even though the sale consideration was stated to have been paid by the purchasers and received by the vendors, but neither the purchasers have paid nor the vendors have received the sale consideration.

3.6. Shri M. Nanda Kumar thus denied the receipt of sale consideration since the mode of Sale Consideration and the quantum of sale consideration paid to each member of the family was not found mentioned in the aforesaid sale deed dtd: 01-09-2014.

3.7. Shri M. Nanda Kumar submitted that M/s. Astro Land Developers have entered into a Sale Agreement dtd: 01-09-2014 with him to sell/allot 14,750 sq.ft of Sital Area with all the civic amenities in the layout proposed to be formed in Sy. No. 58, situated at Chikkanayakanahalli, Varthur Hobli, Bangalore East Taluk measuring 6 Acres 30 Guntas in lieu of the sale consideration due to him which is considered at the same valuation in the other property developed by the Vendor herein by formation of the residential layout with all amenities and facilitates.

3.8. It is submitted that the sale of aforesaid agricultural lands measuring 2 Acres 20 Guntas by Shri M. Nanda Kumar and his family members was on a barter system that in lieu of sale consideration of Rs. 3,00,00,000/- the family of Shri M. Nanda Kumar were entitled for allotment of site area measuring 14,750 sq.ft.

3.9. It was further submitted that the Purchasers M/s. Astro Land Developers did not allot the sital area to Shri M. Nanda Kumar and his family as per the Sale Agreement dtd: 01-09-2014 and therefore the consideration of Rs. 3,00,00,000/- stated to have been paid to Shri M. Nanda Kumar and his family was not paid. Hence in the absence of the receipt of the Sale Consideration, Shri M. Nanda Kumar and his brother is not liable

for capital gain tax as computed by the Ld.AO in the Assessment Order.

3.10. Without prejudice to the above submissions, the assessee also submits that even for the sake of argument without conceding to the receipt of sale consideration of Rs. 3,00,00,000/- as per the recitals of the sale deed, that the 10 Vendors named in the sale deed were entitled to 1/10th of the Sale consideration of Rs.3,00,00,000/- out of which each share of the coparcener amounts to Rs.30,00,000/-. Accordingly, the share of the assessee subject to the sale agreement dtd: 01-09-2014 for allotment of 14,750 sq.ft, the individual share of the assessee ought to have been considered at Rs. 30,00,000/- as against of Rs.1,50,00,000/-. Therefore the addition made by the Ld.AO of Rs. 1,46,94, 817/- being the presumed LTCG is bad in law and hence the same is liable to be deleted.

3.11. The Ld. AO further computed the capital gains of the sale of property bearing No. 1422, HSR Layout, Bangalore at Rs.28,22,370/- after providing deduction of Rs.1,33,630/- being the Indexed Cost of acquisition out of the Sale Consideration of Rs. 30,00,000/-. In this regard the assessee submits that the above property was allotted vide Letter No. BDA/DS-1/HSR:2:1422:2013-14 dtd: 09-01-2014 in favour of the assessee under the incentive Scheme for Voluntary surrender of Land Rules 1989. It was submitted that the Allotment of the above site was made in favour of the assessee for the sake of convenience whereas the said site belongs to all the 10-family members inclusive of assessee since the surrendered land was an Ancestral property and therefore the share of the assessee

amounts to Rs. 3,00,000/- as against Rs. 30,00,000/-. Therefore the LTCG computed by the Ld.AO at Rs.28,22,370/- on a Sale Consideration of Rs. 30,00,000/- is not justifiable in law.

4. Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

4.1. The Ld.CIT(A) upheld the addition made by the Ld.AO.

5. Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this *Tribunal*.

5.1. It is the submission of the Ld.AR that the Ld.AO computed the capital gains of the sale of property bearing no. 1422 at HSR Layout at Rs.28,22,370/- after providing deduction of Rs.1,33,630/- being the indexed cost of acquisition out of the sale of consideration of Rs.30 Lakhs in the hands of Shri M. Nanda Kumar. The Ld.AR submitted that the above property was allotted in favour of Shri M. Nanda Kumar under the incentive scheme for voluntary surrender of land Rules 1989.

5.2. It is further submitted by the Ld.AR that though the allotment of the site was made in favour of assessee (Shri M. Nanda Kumar), for the sake of convenience, the said site however belonged to all 10 family members including the assessee (being M. Nanda Kumar) since the surrendered land was an ancestor property. It is submitted that the share of assessee being Shri M. Nanda Kumar amounts to Rs. 3 Lakhs as against Rs. 30 Lakhs and therefore the LTCG computed by the Ld.AO at Rs.28,22,370/- on the sale consideration of Rs.30 lakhs is not justifiable.

5.3. In case of Shri M. Narendra Kumar the Return of income was selected for scrutiny and the Assessment was completed u/ s.

143(3) of the Act dtd: 29-12-2017 determining the total income at Rs.1,49,21,000/- as against the declared income of Rs.2,26,290/-. The Ld. AO has made an addition of Rs.1,46,94,817/- being the LTCG arising out of a Sale of Ancestral Agricultural land measuring 2 Acres 20 Guntas in Sy. No. 54, situated at Chikkanayakanahalli, Varthur Hobli, Bangalore East Taluk.

Remaining facts similar to that as mentioned in paras 3.3 to 3.8 hereinabove.

5.4. Before this *Tribunal*, the Ld.AR submitted that the sale consideration of Rs. 3 crores was never paid by the purchaser. The entire computation of capital gains by the Ld.AO is bad in law in the case of Shri M. Nanda Kumar who is represented by L/R Smt. R. Jayashree and in the case of Shri M. Narendra Kumar.

5.5. The Ld.AR in support relied on the decision of *Hon'ble Jaipur Bench* in case of *ACIT vs. Ijjaraj Singh* in ITA Nos. 152/JP/2019 & 91/JP/2019 *vide order dated 18/06/2020* in support of his contention.

5.6. In respect of the property at HSR Layout, the Ld.AR submitted that the site is received from the BDA in lieu of ancestral property that was acquired and the date of acquisition is taken as 01/04/1981. The date of the transfer is considered by the assessee to be 28.04.2014 for a sale consideration of Rs.30 Lakhs. However the Ld.AR submitted that the Ld.AO computed the entire capital gains of Rs.28,22,370/- in the hands of the assessee being Shri Nanda Kumar. It is the submission of the Ld.AR that this being ancestral property that was

surrendered to the BDA for formation of the road, the sale consideration belongs to all the 10 co-parceners of the family and the assessee before this *Tribunal* owns 1/10th each share. The Ld.AR thus reiterated his arguments of computing the capital gain in accordance with the share of the assessee being one of the persons in the co-parceners. The Ld.AR further submitted that assessee had claimed exemption u/s. 54F which was denied for the reason that there was no construction of residential house which is an admitted fact.

5.7. The Ld.DR on the contrary submitted that the entire facts requires a *denovo* verification based on various evidences that assessee may file.

6. We have perused the submissions advanced by both sides in the light of records placed before us.

6.1. We note that at the outset capital on sale of consideration of Rs.3 crores in the hands of both the assessees without considering that it was a HUF property in which there were total 10 co-parceners including both the assessees.

6.2. Further we also note that there is no verification carried out by the Ld.AO in respect of the property at HSR Layout being No. 1422. It is submitted by the L/H of Shri M. Nanda Kumar that this property also belongs to all the 10 co-parceners. All these factual submissions needs verification. Assessee is directed to file all relevant details in order to establish the ownership share in both the properties. The Ld.AO is directed to verify the veracity / authenticity of sale of ancestral land admeasuring 2 acres and 20 Guntas and the allotment of property at HSR Layout being No. 1422.

The claim of section 54F has been denied for the reason that the assessee have not received the site and could not construct the house property thereon.

6.3. We note that assessee had allegedly sold land of 2 Acres 20 Guntas bearing survey no. 54 at Chikkanayakanahalli, Varthur Hobli, Bangalore East Taluk to M/s. Astro Land Developers for a sale consideration of Rs. 3 Crores on 01.09.2014. It is the submission of the assessee that assessee has not received the sale consideration at all. He further submitted that the land sold in the sale deed that is placed at pages 4 to 18, assessee is one of the co-parceners among the 10 persons, the details of which have been listed hereinabove.

6.4. The Ld.AR has vehemently submitted that assessee has never received any consideration against the said sale of land to M/s. Astro Land Developers. On perusal of the said sale deed, we note that there is an admission by the vendors being the assessee, his brother and the co-parceners have acknowledged and confirmed the receipt of Rs. 3 crores from the purchaser in clause 1 and 2. Further we also note that in clause 13(a) and 13(b) being the concerned assessees before us, TDS have been deducted against the amount paid by the purchasers the details of which have been provided therein.

6.5. For the sake of convenience, the said clauses are reproduced as under:

13 a) Amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) deducted towards the Tax Deducted at source (TDS) from the sale consideration of the Sri.M.Narendra Kumar as stipulated in the sale deed, payable under the provisions of Income Tax Act 1961 and rules made thereunder. Further the Purchaser has remitted the above said TDS amount to Canara Bank by Vide CIN No.02424650109201400330, dated 01.09.2014, Challan Serial No.00330, to Sri.M.Narendra Kumar's PAN Account No.AMNPM8079N.

b) Amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) deducted towards the Tax Deducted at source (TDS) from the sale consideration of the Sri.M.Nanda Kumar as stipulated in the sale deed, payable under the provisions of Income Tax Act 1961 and rules made thereunder. Further the Purchaser has remitted the above said TDS amount to Canara Bank by Vide CIN No.02424650109201400313, dated 01.09.2014, Challan Serial No.00313, to Sri.M.Nanda Kumar's PAN Account No.AMNPM8080H.

6.6. We note that the allegation of the Ld.AR that the consideration has not been received by the assessee, his brother and other co-parceners has not been verified by the Ld.AO. We direct the Ld.AO to call upon the purchaser and to carry out necessary verification in this regards. We direct the Ld.AO to verify the TDS details that are mentioned in the sale deed in clauses 13a and 13b. We direct the Ld.AO to call upon the purchasers and to verify the treatment given to this transaction in his hands. Assessee is directed to establish that they have not received the consideration under this agreement so as to apply the ratio laid down in the decisions relied by Ld.AR.

6.7. In regards to the property at HSR Layout, the Ld.AO is directed to verify the land records to identify whether it is ancestral property. Assessee is directed to file all relevant details to support all his contention that the said land that was surrendered to BDA is an ancestral property belonging to the 10 co-parceners.

6.8. The claim of section 54F then needs to be considered in accordance with law if there is a transfer in the hands of the

assessee depending on the share of the assessee received in the form of capital gains from the above two properties during the year under consideration. We direct the Ld.AO to ascertain the exact share of the assessee in respect of the properties that are under consideration and then to compute the benefit arising in the assessee's hands u/s. 54F in accordance with law if there is a transfer. All necessary criteria for claiming section 54F may also be verified.

6.9. Based on the above directions, the entire facts may be reverified by the Ld.AO *denovo*. Assessee is directed to file all the details filed in respect of the sale of ancestral property and the period during which the sale consideration was actually received if any in order to ascertain the correct share in the hands of the assessee.

7. The Ld.AO is directed to verify all the necessary documents and consider the claim of assessee in accordance with law.

Accordingly, the issues raised by assessee in both the appeals are remanded to the Ld.AO for *denovo* verification.

In the result, both the appeals filed by the assessee stands partly allowed for statistical purposes.

Order pronounced in the open court on 27th June, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 27th June, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore