

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI ABY T VARKEY, JM
AND
SHRI SHRI PRASHANT MAHARISHI, AM

ITA No. 2172/Mum/2023
(Assessment Year 2016-17)

Narendra Ravji Patel HUF
44, Umiya Niwas, Maneklal,
Estate, LBS Marg, Ghatkopar
(W),
Mumbai-400086
(Appellant)

Vs.

ITO, Ward 27(2)(4), Mumbai
Tower No. 6, Vashi Railway
Station Commercial Complex,
Vashi,
Navi Mumbai-400703
(Respondent)

PAN No. AACHN4691N

Assessee by : Shri. Rohan Deshpande AR
Revenue by : Shri. Ashok Kumar Ambastha
SR DR

Date of hearing: 10.10.2023
Date of pronouncement : 30.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee HUF against the appellate order passed by the National faceless appeal Centre Delhi for assessment year 2016 – 17 on 28/4/2022 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3)



of the act by income tax officer Ward 27 (2) (4), Mumbai (the learned assessing officer was dismissed.

02. In fact, at the time of filing of the appeal, the registry has raised an objection that this appeal is time barred by 350 days. The assessee has submitted an affidavit of Karta wherein it has been stated that the order of the learned CIT – A was passed on 28/4/2022, which was brought to the notice of assessee on 25 March 2023 causing the delay of 350 days. Assessee states that he is a senior citizen not familiar with the email and electronic communication and English-language. The email address was also created by other persons. Further, the e-filing portal of the assessee has to email addresses, which was operated by the professional consultant of the assessee who is filing the return of income. Thereafter, another email address was incorporated by the tax consultant. The assessee to consultant at the email address filed the first appeal originally available. The impugned appellate order was also communicated only on email and no physical concerned on the assessee. Further, when the consultant was looking at e-filing portal for routine review he came to know about this order somewhere in 25th of March 2023. This was intimated to the assessee. As per the advice assessee immediately after consultant to file an appeal. Thus the delay caused due to inadvertence without any malafide, therefore, it was prayed that delay in filing of this appeal may be condoned.
03. The learned departmental representative vehemently objected that there is a delay of 350 days and therefore it should not be condoned as assessee has not shown any sufficient reason.



04. We find that assessee is an HUF whose karta is a senior citizen, not aware about the technologies, ignorant about the English submitted an affidavit showing that what are the circumstances under which the assessee could not file an appeal. As soon as the assessee is made aware of the appellate order passed by the learned CIT – A, immediately he made an effort to get the appeal filed before the tribunal. Maybe in that case there is an inordinate delay in filing of the appeal but the reasons shown to us are sufficient enough to condone the delay. Accordingly, we can on the delay. Even otherwise, the assessee does not gain anything by filing an appeal by letter and further the honourable Supreme Court in case of MSt katiji has clearly held that the appeal should be heard on merits of the case. Accordingly, appeal is admitted.
05. Brief facts of the case shows that assessee filed its return of income declaring total income of ₹ 4,609,030/- on 31/3/2017. The case was selected under limited scrutiny for verification of value of consideration for computation of capital gain. It was found that assessee has sold a property at Kalyan Thane for an amount of ₹ 130 lakhs whereas the market value as per the stem duty authority is 1,61,57,000. Therefore, the assessee was asked to show why the difference between these two values should not be treated as income under section 50 C of the act. Assessee stated that actual sale consideration of the property is ₹ 130 lakhs, the property suffers transport visibility and further it does not have adequate parking facility. As the area of the property is more than 2000 ft², the buyers are not available. The property is purchased by a single buyer therefore actual realizable value is less than the stamp duty value. Assessee also submitted the valuation report by an approved

government valuer. Assessee also stated on 19/11/2018 to refer the matter to the Department valuation officer for finding out the actual value of the property. As per departmental valuer fair market value of immovable property was determined at ₹ 13,930,000/-. Assessee contended before the AO that the difference is merely 10% and therefore no addition should be made. The AO did not agree with the same and accordingly made an addition of ₹ 930,000/- under section 50 C of the act.

06. Before the learned and CIT appeal assessee contended that the difference is merely 10% between value adopted by department valuer and actual transaction value and therefore no addition should be made. The CIT – A did not agree and confirmed the addition.
07. Therefore, assessee is in appeal before us contending that the difference between the valuation adopted by the departmental valuer and actual transaction value is less than 10% of the transaction value and therefore no addition should be made. He further referred to the relief under that section and submitted that it applies retrospectively.
08. London departmental representative vehemently objected the same stating that for this assessment year there is no such provision available and therefore the lower authorities are correct in rejecting the claim of the assessee. Therefore, the addition has been correctly made.
09. We find that the impugned assessment year is 2016 – 17. Admittedly, assessee has sold a property at the transaction value of ₹ 130 lakhs. The valuation by the departmental valuer comes to ₹ 13,930,000/-. Therefore, the difference between the transaction



value and the value of property as denied by the departmental valuation officer is ₹ 930,000. We find that the tolerance limit provided under section 50 C (1) was 5%, which was enhanced to 10% with effect from 1/4/2021, and therefore apparently for assessment year 2016 – 17 it was not available. However, it has been held that Amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 per cent to 10 per cent are effective from date on which section 50C, itself was introduced, i.e. 1-4-2003 in [2021] 127 taxmann.com 376 (Delhi - Trib.). Therefore respectfully following the decision of the coordinate bench wherein it has been held that the rate of 10% of tolerance limit is applicable with effect from 1/4/2003 itself, no addition could be made in the hence of the assessee. Accordingly, we direct the learned assessing officer to delete the addition of ₹ 930,000/- under section 50 C of the act. Thus, all the grounds of the appeal of the assessee are allowed.

010. In the result appeal of assessee is allowed

Order pronounced in the open court on 30.10.2023.

Sd/-

Sd/-

(ABY T VARKEY)
(JUDICIAL MEMBER)

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.10 .2023

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Copy of the Order forwarded to :



BY ORDER,

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

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai