

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No. 2726/DEL/2023
Assessment Year 2018-19

Gurjeet Singh Dhanora Jattan, Kurushetra Ladwa Kurushetra Haryana	Vs.	ITO Ward-1 Kurushetra
TAN/PAN: BEEPS5635C		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Vivek Kumar Upadhyay, Sr.DR		
Date of hearing:	16	01	2024
Date of pronouncement:	16	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 26.07.2023 arising from the assessment order dated 28.09.2019 passed by the Assessing Officer (AO) under Section 144 of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

2. The grounds of appeal raised by the assessee read as under:

"1) That the order passed by Learned Assessing officer is illegal, arbitrary has been passed in a Haste and has ignored basic aspects

and facts of the case, thus causing undue hardship to the Appellant.

2) That the assessee never received any notice not received any e-mail of the assessee.

3) That the assessee is a farmer live in village and sale their prenatal rural agricultural land owned by his father in capacity of as a power of attorney on dated as on 15/12/2017 Rs. 3295000.00, 10/07/2017 Rs. 1900000, 26/04/2017 - Rs. 3800000. Ownership of all the land with the father of the assessee and all the gain from sale of agricultural land is exempt from the capital gain because all the land are rural agricultural land. And wife sold agricultural land of Rs. 10286500.00 which is also rural agricultural land. In both cases assessee is only having power of attorney not the owner of the land but during the filling of return this fact not considered by the counselor and Learned officer not consider the fact and imposed the capital gain tax which is illegal and against the law. (copy of distance certificate and sale deed is enclosed here with)

4) As per Income Tax Section 2(14) where the area is outside the range of 2 K.M. from the municipal committee whose total population more than ten thousand but less than one lakh from the local limit of municipal committee is considered as rural area. As per Income Tax Act agriculture property in rural area is not within the scope of capital asset. Land situated near to municipal committee Ladwa, Haryana and populated of ladwa is about 28000. All the tax imposed by the learned officer is illegal and I request you to please delete the demand and obliged.

5. That assessee request to accept the appeal and condone the delay in filing appeal due to lock down and pandemic situation and health issue of the assessee.”

3. When the matter was called for hearing, none appeared for the assessee and also no adjournment application was filed. Accordingly, the matter was proceeded ex-parte.

4. It is seen from the record that the assessment order was passed under Section 144 of the Act in the best judgment of the AO owing to non compliance of the requirement of Section 142(1) r.w. Section 143(2) of the Act. It is further seen that the CIT(A) dismissed the appeal of the assessee *in limine* by refusing to condone the delay of almost 790 days. The appeal

was thus dismissed without adjudication of the appeal on merits. As further observed, the assessee pleaded before the CIT(A) that owing to ongoing pandemic, the appeal was instituted belatedly on 21.08.2022 against the assessment order dated 28.09.2019.

5. It is common knowledge that Covid-19 caused unprecedented disruption across the globe at the relevant time when the first appeal was expected to be filed and thereafter. Hence, we find force in the claim of the assessee against any deliberate complacency. When covid period is excluded, the remaining delay is nominal. At this stage, we also observe that the assessee is from a humble background and a rural agriculturist and in such background no *mala fide* can be imputed for delay in filing the first appeal by adopting the hyper technical approach. A reference to the useful judgments in the case of *Collector Land Acquisition, Anantnag & Another vs. Mst. Katiji & Ors (1987) 2 SCC 107; N. Balakrishnan vs. M. Krishnamurthy, 1998 (7) SCC 123 and Vijay Vishin Meghani Vs DCIT (2017) 398 ITR 250 (Bom.)* can be made.

6. Consequently, we consider it just and proper to summarily restore the matter back to the file of the CIT(A) for *denovo* consideration of appeal and fresh determination of issues involved in the light of the relevant facts and in accordance with law after giving proper opportunity to the assessee.

7. The delay before the CIT(A) in instituting the appeal is thus condoned and the CIT(A) shall adjudicate the appeal on merits as per grounds raised in accordance with law. The assessee is directed to promptly attend the proceedings before

the First Appellate Authority failing which the CIT(A) shall be at liberty to draw appropriate inference. Therefore, all the issues involved in the present appeal are set aside and the matter is remitted back to the file of the CIT(A) for fresh determination in accordance with law.

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

Order was pronounced in the open Court on 16/01/2024

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: **/01/2024**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**