

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3378/Mum/2023  
(A.Y. 2020-21)**

Amit Kumar Harish Kumar, Mukhi 61-A, Mittal Tower, Nariman Point, C/o. Shyam Bhatia & Co. C.A. 326, Prem Trade Centre Maharani Road, Indore (M.P) Madhya Pradesh - 452001	Vs.	Income Tax Officer-3(2)(1) 1629, 16 <sup>th</sup> Floor, Air India Building Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:BPXPM9100G		
Appellant	..	Respondent

Appellant by :	Pankaj Mogra
Respondent by :	Anil Sant

Date of Hearing	08.02.2024
Date of Pronouncement	14.03.2024

**आदेश / ORDER**

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-57, Mumbai, dated 28.07.2023 for A.Y. 2020-21. The assessee has raised the following grounds before us:

- “1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in dismissing the appeal as filed by the appellant for the reason that there was a delay of 40 days in the filing of appeal before him. It is submitted that on the facts of the case and in law, the Ld. CIT(A) was not correct in dismissing the appeal merely for the reason that appeal was filed late marginally by a period of 40 days and Moreso even*

*when it was mentioned in the facts of the case that appellant is a NRI and due to some mis-understanding the period of filing of appeal there was delay in filing the appeal before the CIT(A).*

2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not deciding the ground in respect of disallowance made by the Ld. A.O. in respect of deduction as claimed by the appellant u/s 54F of the Income Tax Act of Rs. 2,24,59,600/- even when the appellant has deposited the entire amount of Sale consideration received in respect of Sale of Property in Capital Gain Deposit Scheme before the due date of filing of Return. Thus, the disallowance so made by the Ld. A.O. by denying the deduction claimed u/s 54F of the Act of Rs.2,24,59,600/- was neither legal nor proper and same requires to be deleted in full.*
3. *The assessee reserves its right to add, alter, modify or amend the grounds of appeal as and when required.”*

2. Fact in brief is that assessee has filed return of income for the assessment year under consideration on 30.12.2020 declaring total income of Rs.71,660/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 29.06.2021. On perusal of the detail filed by the assessee the assessing officer noticed that assessee has sold a plot of immovable property purchased in 1998-99 at Santi Niketan, Indore (M.P) for Rs.2,35,00,000/- and earned long term capital gain on this transaction at Rs.2,24,59,600/-. The assessee has deposited the entire sale consideration of Rs.2,35,00,000/- in capital account scheme from 22.12.2020 to 26.12.2020 in a capital gain with Bank of Baroda and claimed deduction u/s 54F of the Act of Rs.2,24,59,600/- in his return of income for assessment year 2020-21 filed on 30.12.2020.

3. The AO observed that due date for filing return of income for the assessment year 2020-21 was normally 31.07.2020 which was extended till 10.01.2021 vide notification dated 30.12.2020. The assessing officer was of the view that date of making investment for claiming roll over benefit/deduction in respect of capital gain u/s 54 to 54GB of the Act was only extended till 30.09.2020 vide press release dated 24.06.2020. The assessee has claimed deduction u/s 54F on the

basis of notification dated 30.12.2020 stating that since requirement under the said section was to make the investment/construction/purchase on or before the date of filing of return for the relevant assessment year which was extended till 10.01.2021, the time limit of making investment/construction/purchase also got automatically extended till 10.01.2021. The assessee was issued show cause notice on 11.03.2022 asking him to show cause as to why the deduction claimed u/s 54F should not be disallowed in view of the fact that the investment in the capital gain account was made after 30.01.2020. The assessee explained that vide press release dated 30.12.2020 time limit to file income tax return for assessment year 2020-21 was extended up to 10.01.2021 which automatically implies that due date of depositing amount in capital gain account scheme was also extended to 10.01.2021 as per Sec.54F(4) of Income Tax Act. The assessee further submitted that he had deposited sale consideration in capital gain deposits scheme before 10.01.2021 which was the due date of filing income tax return for assessment year 2020-21. Therefore, he submitted that he was eligible to claim deduction u/s 54F of the Income Tax Act.

4. The assessee also explained that he was non-resident Indian and staying at Dubai due to Covid condition in 2020 flight were not operating between Dubai and India regularly and there were lot of travelling restrictions and this delayed in the selection of new house but he managed to deposit the sale consideration of amount in capital gain account scheme before the last date of filing return of income.

5. However, the AO has not agreed with the submission of the assessee stating that the press release dated 30.09.2020 has not particularly mentioned about extending the claim of deduction u/s 54 to 54GB in the press release dated 24.06.2020. Therefore, the AO has disallowed the claim of deduction u/s 54 of the Act of Rs.2,24,59,600/-.

6. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has not adjudicated the issue on merit but simply dismiss the appeal of the assessee stating that there was delay of 40 days in filing the appeal.

7. During the course of appellate proceedings before us the ld. counsel vehemently contended that he was non-resident Indian and was not living in India on permanent basis. It is also submitted that assessment order was passed during the covid period and he has provided all the detail but could not file appeal in time due to lack of awareness of time limit available for filing the appeal but the same was filed after marginal delay of 40 days after consulting his legal advisor. The ld. Counsel further submitted that ld. CIT(A) was unjustified in not condoning the marginal delay in filing this appeal since assessee was not living in India and therefore, the legal consultant could not be consulted immediately on receiving of the order of the CIT(A). The ld. Counsel has also referred the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji, 1987 taxman.com 1072 and other various decision of the Tribunal.

On the other hand, the ld. D.R supported the order of lower authorities.

8. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra in this order the assessee has deposited the entire sale consideration in capital gain scheme with Bank of Baroda between 27.12.2020 to 26.12.2020 and the return was filed on 30.12.2020 before the extended due date of filing return of income. It is evident that assessee has deposited the amount of sale consideration before the due date of filing return in capital gain deposit scheme. However, the ld. CIT(A) has not adjudicated the issue on merit but simply dismissed the appeal of the assessee for marginal delay in filing return of income by 40 days. The assessee has explained before

the Id. CIT(A) that he was a NRI and there was marginal delay of 40 days in filing the appeal because of bonafide belief that there was a time limit for filing the appeal, however, on consulting of his legal advisor he had filed the appeal by marginal delay of 40 days. After considering the submission of the assessee we consider that there is a bonafide reason for marginal delay in filing the appeal before the first appellate authority, and the Id. CIT(A) was not justified in dismissing the appeal merely for the reason that the appeal was filed late marginally by period of 40 days. Therefore, we condone the delay in filing this appeal by 40 days before the Id. CIT(A) after considering the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji, 1987 taxman.com 1072 wherein held that sufficient cause for the purpose of condonation of delay should be interpreted with the view to do even-handed justice on merit in preference to scuttle a decision on merit. Therefore, after condoning the delay in filing this appeal before the Id. CIT(A) we direct the Id. CIT(A) to decide the appeal filed by the assessee on merit after taking into consideration the material fact that due date of filing return of income was extended and assessee has deposited the sale consideration in capital gain account scheme before the extended due date of filing return of income. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 14.03.2024

Sd/-

(Amit Shukla)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 14.03.2024

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.