

आयकर अपीलिय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1279/Kol/2023
Assessment Year: 2013-14

Rajib Chakraborty (PAN:ABYPC 9739 R)	Vs.	ITO, Ward-30(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.04.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	.05.2024
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 25.08.2020 for the AY 2013-14.

2. At the outset the Ld. Counsel for the assessee pointed out that the appeal is barred by limitation by 1130 days. The Ld. A.R drew the attention of the bench to the condonation application along with affidavit filed by assessee explaining the delay

in filing the appeal . The ld. AR submitted that the appellant has preferred an appeal before the Hon'ble Bench of Income-tax Appellate Tribunal, Kolkata on 28.11.2023 against the impugned orders passed by the Ld. Commissioner of Income Tax (Appeals)-8, Kolkata dated 25.08.2020 u/s 250 of the Act for the AY 2013-14. The ld counsel submitted that as per the provisions of Section 253(3) of the Act ,the appeal before the Tribunal against the order u/s 250(6) of the Act , has to be filed within sixty days from the date on which the order sought to be appealed against is communicated. Further, as per the provisions of Sec.253(5) of the Act , the Tribunal may admit an appeal after the expiry of the relevant period referred to in sub-section (3) or sub-section(4), if it is satisfied that there was sufficient cause for not presenting it within that period.

3. The ld counsel further submitted that earlier the appellant was a resident of Kolkata residing at Flat B-2/8, 24 Mandeville Gardens, Ballygunge, Kolkata 700019. The appellant in the year 2009 had shifted to United Kingdom for work and was self-employed there. For the relevant AY 2013-14, the appellant had filed the return of income 29.03.2014 in which the address was mentioned as Flat B-2/8, 24 Mandeville Gardens, Ballygunge, Kolkata - 700019. The case of the appellant was selected for scrutiny u/s 143(3) of the Act and the same was completed u/s 143(3) on 28.01.2016. Aggrieved the appellant had preferred an appeal against the same before the Ld. CIT(Appeals)-8,Kolkata. The matters however were not taken up for hearing for quite along time. In the meanwhile, the appellant had become a British passport holder and had thus permanently shifted his residence to United Kingdom. However his mother continued to reside at the local address in Kolkata.

4. The ld AR submitted that there was an unexpected outbreak of global pandemic COVID-19 in March 2020 and not only India but the world was engulfed in an existential crisis from March 2020 until end of December 2021. During this intervening period, the Ld. CIT(Appeals) had taken up the matters for hearing in July & August 2020 and since the notices understandably remained un-served/ unattended,

as the appellant was in lock down in United Kingdom and his mother due to ill-health and age was also in complete lockdown at home in Kolkata. The Ld. CIT(Appeals) thus framed the order ex-parte order dismissing the appeal preferred by the assessee. The appellant understands that the order remained unserved for the reason that it may have been delivered at her mother's address which was under lockdown under COVID Outbreak.

5. The AR further mention that this order was passed physically without any Document Identification Number ('DIN') which had otherwise become mandatory by CBDT Circular No.19/2019 and therefore the impugned order itself was non-est and ab initio void. The appellant was always under the impression that the appeal shall be decided electronically online and therefore in absence of any appellate order available on ITBA portal, the undersigned was under the impression that the appeal is still pending. It was only during the month of October, 2023 when his Authorized Representative received a call from the Income-tax Department requiring the appellant to make payment of the tax dues that it was gathered that the appeal had been disposed off ex-parte by Ld. CIT(Appeals) during the COVID pandemic period. Immediately thereafter, steps were undertaken to prefer the present appeal.

6. It is further stated that the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3 of 2020 vide order dated 10.01.2022 has extended the limitation period for filing of applications which inter alia included applications under the Income-tax Act, 1961 in relation to the orders passed on or after 15.03.2020 up to 28.02.2022. The Hon'ble Supreme Court had directed that in computing the period of limitation for any appeal or application, the period from 15.03.2020 till 28.02.2022 shall stand excluded and additionally a limitation period of 90 days from 01.03.2022 shall be available. Consequently, the period of limitation u/s 253(3) in the present case stood extended to 30.05.2022. The delay in presenting the present appeal is therefore 525 days which deserves to be condoned.

7. The Id AR referred and relied on the decision of Hon'ble Apex Court in the case of Improvement Trust vs. Ujagar Singh &Ors. (2010) 6SCC 786 (SC) wherein it has been held that unless mala fide intention exists in the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities. Apart from the above, the applicant would not have gained in any manner whatsoever, by not filing the application within the period of limitation.

8. Further, the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji (1987) 1987 taxmann.com 1072 (SC) also deliberated on the expression "sufficient cause" and held that 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.

9. The Id AR submitted that the delay of 525 days in filing of appeal u/s 253(5) by the appellant is thus based on aforesaid bona-fide cause. It is humbly submitted that your Honour have the power to condone the delay and the same needs to be exercised liberally. Based on the aforesaid, it is humbly prayed that the delay in presenting the appeal be condoned and the appeal be admitted, in the interest of substantial justice.

10. The Ld. D.R on the other hand opposed the contentions of the assessee that the period of 1130 days is beyond the control of the assessee. The Id. D.R submitted that it may be true that the appellate order was passed by the Id CIT(A) during Covid period and it was also passed physically without there any copy being available online but even if considering the COVID period and further time as allowed by the Hon'ble Apex Court is excluded till 31.5.2022 even then there remains considerable period which needs to be explained with sufficient reasons as the assessee has filed

appeal with further delay of 525 days. Thus even thereafter there was a considerable delay in filing the appeal which has not been explained by the assessee. The Ld. D.R therefore prayed that the condonation application may kindly be rejected and appeal be dismissed as barred by limitation.

11. We have duly considered the rival contentions and gone through the record carefully. Sub-section 5 of Section 253 contemplates that the Tribunal may admit an appeal or permit filing of memorandum of cross-objections after expiry of relevant period, if it is satisfied that there was a sufficient cause for not presenting it within that period. This expression "sufficient cause" employed in this Section has also been used identically in sub-Section 3 of Section 249 of the Act, which provides power to the Id. Commissioner to condone the delay in filing of the appeal before the Commissioner. Similarly, it has been used in Section 5 of the Indian Limitation Act, 1963. Whenever interpretation and consideration of this expression has fallen for consideration before the Hon'ble High Courts as well as before the Hon'ble Supreme Court then, the Hon'ble Courts were unanimous in their conclusion that this expression has to be construed liberally. We may make reference to the following observations of the Hon'ble Supreme court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353*:

- "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 pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, 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 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."*

12. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M. Krishnamurthy (supra)*.

It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

*A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi lain Vs. KuntalKumari [AIR 1969 SC 575]* and *State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]*. It must be remembered tliat in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a ITA No.201, 202 and 203/Ahd/2020 salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

13. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their

approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach. In the light of above, if we examine the facts of the present case, then it would reveal that basically the appeal has been filed after 1130 days of the Id. CIT's order but almost more than 604 days are attributable to COVID period, i.e. March ,2020 to May,2022. We note that earlier the appellant was a resident of Kolkata residing at Flat B-2/8, 24 Mandeville Gardens, Ballygunge, Kolkata 700019 and in the year 2009 he had shifted to United Kingdom for work and was self-employed there. We also note that for the relevant AY 2013-14, the appellant had filed the return of income 29.03.2014 in which the address was mentioned as Flat B-2/8, 24, Mandeville Gardens, Ballygunge, Kolkata - 700019. The case of the appellant was selected for scrutiny u/s 143(3) of the Act and the same was completed u/s 143(3) on 28.01.2016 and an appeal against the same was preferred before the Ld. CIT(Appeals)-8,Kolkata. The matters however were not taken up for hearing for quite along time. In the meanwhile, the appellant had become a British passport holder and had thus permanently shifted his residence to United Kingdom. However his mother continued to reside at the local address in Kolkata. Thereafter there was an unexpected outbreak of global pandemic COVID-19 in March 2020 and not only India but the world was engulfed in an existential crisis from March 2020 until end of December 2021. We note that during this intervening period, the Ld. CIT(Appeals) took up the appeal for hearing in July & August 2020 and framed the order ex-parte dismissing the appeal preferred by the assessee since the notices remained un-served/ unattended, as the appellant was in lock down in United Kingdom and his mother due to ill-health and age was also in complete lockdown at home in Kolkata. In our opinion the assessee has explained the reasons for late filing of appeal which seem to be sufficient and reasonable. Moreover, making the appeal time-barred has not been used by the assessee as a tactic to avoid the litigation with the Revenue because such strategy would not give any benefit to the assessee in this type of litigation. Therefore, we condone the delay and proceed to decide the appeal on merit.

14. The only effective issue raised in the grounds of appeal is that the Ld. CIT(A) has erred in facts and on law in upholding the order of AO wherein the AO has denied the benefit of exemption claimed u/s 54 of the Act to the extent of Rs. 52,40,978/- by ignoring the facts that the assessee has acquired new residential property after sale of house property within the stipulated time limit as set out in Section 54 of the Act and thus substantively complied with the aforesaid provisions of the Act.

15. Facts in brief are that the assessee filed return of income on 29.03.2014 declaring total income of Rs. 5,99,150/-. The case of the assessee was selected for scrutiny under CASS and notice was issued u/s 143(2) of the Act by ACIT, Circle-14(1), Bengaluru and served to the assessee on 25.09.2014. Thereafter as per the request of the assessee the case was transferred to ITO, Ward-33, Kolkata on the ground that the assessee is now settled in 24, Mandeville Gardens, Kolkata-700019. Thereafter the notice u/s 142(1) of the Act was issue don 29.10.2015 and duly served to the assessee. The reason for selection in scrutiny in this case was large deduction claimed u/s 54 of the Act. The assessee during the year sold a property at C-301, 3rd Floor, Canopy Citadel at a consideration of Rs. 1,10,00,000/- and after claiming deduction u/s 48 of the Act towards indexed cost of Rs. 57,59,022/-, the consequent long term capital gain of Rs. 52,40,978/- was claimed as exempt u/s 54 of the Act. The said exemption was claimed for investment the said long term capital gain in the purchase of property within the stipulated time as contemplated u/s 54F of the Act. The assessee filed before the AO the construction agreement dated 14.07.2014 with M/s Canopy Estates (P) Ltd. ,Canopy house, No. 969, 5th "A" Cross, HRBR, 1stBlock, Bangalore-560043 regarding the purchase the property at E1/10, 10th Floor, East Wing, Canopy Crest. The details of payment made are as under:

<i>Cheque no. 189420 dated 22.09.2014</i>	<i>Rs. 10,00,000/-</i>
<i>Standard Chartered Bank</i>	
<i>Cheque no. 189421 dated 16.10.2014</i>	<i>Rs. 40,00,000/-</i>
<i>Standard Chartered Bank</i>	

Cheque No. 588340 dated 30.12.2014

Rs. 10,00,000/-

ICICI Bank

The AO observed from the said details filed by the assessee that the payment made on 22.09.2014 towards the purchase of new asset. The objection of AO is that the amount of capital gain which was not utilized for purchase/construction of new asset and which remains to be utilized before the date of furnishing return of income u/s 139 shall has to be deposited by the assessee not later than the due date of filing of return u/s 139 of the Act in the specified bank account. Accordingly the said claim u/s 54 of the Act of Rs. 52,40,978/- was rejected and the same was added to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 28.01.2016.

16. The Ld. CIT(A) simply affirmed the order of AO by holding that the assessee has failed to comply with the said provision of Section 54(2) as the assessee has failed to deposit the said amount in the specified bank account.

17. After hearing the rival contentions and perusing the material on record, the undisputed facts as culled out from the records as placed before us are that the assessee sold a property during the year for consideration of Rs. 1,10,00,000/- situated at C-301, 3rd Floor, Canopy Citadel and after claiming the index cost u/s 48 of the Act, the long term capital gain of 52,40,978/- was claimed as exempt u/s 54/54F of the Act as the said capital gain was invested in the construction of new property as is apparent from the construction agreement dated 14.07.2014 with M/s Canopy Estates (P) Ltd., Canopy house, No. 969, 5th "A" cross, HRBR, 1st Block, Bangalore-560043 regarding the purchase of property at E1/10, 10th Floor, East Wing, Canopy Crest. All the payments were made in three installments on different dates as stated above. According to AO, since the assessee has made payment beyond the due date of filing the return of income in terms of provisions of Section 139(1) of the Act in the instant assessment year, therefore the said long term capital gain on sale of property has to be got deposited in the specified bank account. Therefore he added the same to the income of the assessee which was affirmed by the Ld. CIT(A) for the same reasons. In our opinion, the benefit of Section 54F can not be denied on the ground that the

assessee has not deposited the long term capital gain in the specified bank account because the assessee has invested the amount of capital gain for construction of house in the residential property as stated hereinabove nonetheless not depositing the amount of unutilized long term gain in the specified bank account as per the mandate u/s 54/54F of the Act, The case of the assessee finds support from the following decisions:

i) Decision of Co-ordinate Bench of Kolkata in the case of Sunayana Devi vs. ITO, Ward-2(4), Siliguri 86 taxmann.com 72 wherein it has been held as under:

“17. Having come to the conclusion that the assessee had utilised the net consideration in construction of a house within the period of three years from the date of transfer, the question would be whether the absence of deposit of unutilised net consideration in a specific bank account as is required u/s 54F(4) of the Act, should the Assessee be denied the benefit of deduction u/s 54F of the Act. On this issue the ld. Counsel for the assessee brought to our notice the decision of the Hon'ble Karnataka High Court in the case of CIT v. K. Ramachandra Rao [2015] 56 Taxman.com 163/230 Taxman 334 (Karn). In the aforesaid decision the assessee had not deposited the unutilised net consideration in a specific bank account as is required u/s 54F of the Act. The assessee had however invested the net consideration in construction of a residential house within the period contemplated u/s 54F (1) of the Act. The Hon'ble Karnataka High Court had to decide whether the assessee could be given a deduction of benefit u/s 54F (1) of the Act. The Hon'ble Karnataka High Court held that if the assessee invests the entire consideration in construction of the residential house within three years from the date of transfer he cannot be denied deduction u/s 54F of the Act on the ground that he did not deposit the said amount in capital gain account scheme before the due date prescribed u/s 139(1) of the Act. In the light of the aforesaid decision of the Hon'ble Karnataka High Court and in the light of the admitted factual position that the assessee invested the sale consideration in construction of a residential house within three years from the date of transfer, we are of the view that the assessee should be given the benefit of deduction u/s 54F of the Act on the sum of Rs.16,50,000/- also and cannot be denied the benefit the said benefit for the reason that he had not complied with the requirements of Sec.54F(4) of the Act. Thus in effect the assessee would be entitled to deduction u/s.54F of the Act of Rs.20,31,839/- viz., for the investment of Rs.3,50,000/- in purchase of the land, Rs.31,839/- stamp duty and registration charges and Rs.16,50,000/- utilised for construction of a residential house within this period specified in section 54F(1) of the Act. The AO is accordingly directed to allow deduction u/s 54F of the Act a sum of Rs.20,31,839/-. The appeal of the assessee is thus partly allowed.”

ii) Decision of Co-ordinate Bench of Delhi Tribunal in the case of Ms. Sarita Gupta vs. PCIT [2023] 157 taxmann.com 208(Delhi-Trib) wherein it has been held as under:

“5. We have considered rival submissions and perused the materials on record. From the order sheet maintained by the Assessing Officer in the assessment record, it is evident that in course of assessment proceedings, the Assessing Officer has thoroughly examined the issue of sale of the immovable property and the resultant capital gain arising from such sale. In fact,

in order-sheet entry dated 18-6-2019, the Assessing Officer has clearly stated that assessee's counsel has furnished written reply, sale deed, copy of purchase of property and computation of capital gain. In the said order sheet, the Assessing Officer has also called upon the assessee to furnish the details of exemption claimed under section 54 with supporting evidences. Thus, as could be seen from the order-sheet entries in the assessment record, the Assessing Officer has duly examined the issue relating to capital gain from sale of property as well as assessee's claim of deduction under section 54 of the Act. A perusal of the show-cause notice issued under section 263 of the Act as well as the order passed under the said provision clearly reveal that the revisionary authority has not expressed any doubt regarding the quantum of capital gain arising at the hands of the assessee and also the fact that such capital gain was invested in purchase/construction of residential house within the time limit prescribed under section 54(1) of the Act. Only because the capital gain was not deposited in the capital gain account scheme, the revisionary authority has treated the assessment order to be erroneous and prejudicial to the interest of Revenue. In our view, learned PCIT has adopted a hyper-technical approach while dealing with the issue. When the basic conditions of section 54(1) has been satisfied, in our view, the assessee remains entitled to claim the deduction under section 54 of the Act. In any case of the matter, there is no prejudice caused to the Revenue as the assessee in terms of section 54(1) of the Act is entitled to deduction."

iii) Decision of Hon'ble Karnataka High Court in the case of CIT vs. K Ramachandra Rao [2015] 56 taxmann.com 163 (Karnataka). The operative part is reproduced as under:

"4.1 Re.QuestionNo.2 :

"As is clear from Sub-section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct."

Considering the facts and circumstances of the assessee in the light of the aforesaid decisions, we observe that the case of the assessee is squarely covered by the aforesaid decisions and therefore the assessee is entitled to exemption of capital gain invested in the construction of new property within the time as allowed under that section and failure to deposit the unutilized amount on the due date of filing the income tax return in specified bank account would not disentitle the assessee from claiming exemption

u/s 54/54F. Therefore, we are inclined to set aside the Ld. CIT(A) and direct the AO to delete the addition by allowing exemption u/s 54/54F as claimed by the assessee.

18. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 20th May, 2024

Sd/-
(SonjoySarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 20th May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rajib Chakraborty, C/o, AKDD & Associates, Rawdon Chambers, 11A, Rawdon Street, 4th Floor, Kolkata-700017
2. Respondent- ITO, Ward-30(3), Kolkata
3. Ld. CIT(A)-8, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata