आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं /**ITA No.542/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2017-18)

Shri Sharma Yegnnarayana Praturi, Hyderabad PAN:BIOPP9553A	Vs.	Income Tax Officer (International Taxation)2, Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri Kumar Pal Tated, CA	
राजस्व द्वारा/Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	05/06/2024	
घोषणा की तारीख/Pronouncement:	12/06/2024	

आदेश/ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 21/07/2022 of the learned CIT (A)-10, Hyderabad, relating to A.Y.2017-18.

2. The grounds raised by the assessee are given below:

The Ld. CIT(A) erred in partially upholding the order of Assessing officer passed u/s 143(3) of the Act dated 05.12.2019 which is bad both under facts and law.
The Ld. CIT(A) erred in sustaining an addition of Rs. 2,84,000/- to the income as Unexplained money in hands of assessee u/s 69A.
The Ld. CIT(A) ought to have appreciated the fact that the cash relates to his savings from past years and the same has been deposited in bank account
The Ld. CIT(A) erred in not accepting the fact that the indexed cost of acquisition for the property sold was at Rs. 97,34,175/-.
The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

3. At the outset, the learned Counsel for the assessee drew our attention to the delay of filing the appeal for a period of 413 days. In this regard, the assessee submitted that the delay was on account of assessee being the Sr. Citizen residing abroad and he was not keeping good health. For that the assessee had filed certain documents to substantiate that there was delay in filing appeal before the Tribunal.

4. It was submitted that there was reasonable cause for not filing the appeal within the stipulated time and the AR requested for condonation of delay in filing the present appeal. During the course of argument, we inquired from the assessee as to when the Assessing Officer passed the assessment order and

whether any report/reply was filed thereto or not. In this regard, the learned AR drew our attention to para 8 of the assessment order which is to the following effect:

8. **Capital Gain not offered to tax :**

As per the information available with the Department, the assessee has sold a property in the year 2016 vide document No.1415/2016 registered with SRO, Hyderabad R.O. on 11/04/2016. The SRO valuation of the property was Rs.67,32,000/- and a sum of Rs.4,04,020/- was paid by the assessee towards stamp duty, transfer duty, registration fee and user charges. As per the purchase deed No.7972/80 of the property, the acquisition cost of the property was Rs.1,00,000/-.

In his reply dt.01/03/2019, the assessee took the acquisition cost of the property at Rs.8,65,260/-. It was mentioned in the letter that the acquisition cost was Fair Market Value as per the Valuation Report. However, despite specifically called for, no valuation report was filed.

The assessee computed indexed cost of acquisition at Rs.97,34,175/- and the sale consideration at Rs.33,60,000/-, thereby arriving at a capital loss of (-) Rs.63,74,175/-. However, it is pertinent to mention here that in the revised return of income the assessee claimed the indexed cost of acquisition at Rs.97,34,175/- in the revised return of income as against a sum of Rs.48,65,625/- mentioned in the original return of income.

The assessee was called for documentary evidence for taking the indexed acquisition cost of the property at Rs.97,34,175/- and asked to show cause why the SRO valuation of the property i.e., Rs.67,32,000/- should not be taken for computation of capital gains as per the provisions of Sec.50C of the Act. However, the assessee did not file any reply. No documentary evidence was received except the purchase deed and the sole letter dt.01/03/2019.

Despite several opportunities afforded to the assessee, no supporting evidences were filed in respect of the claim of capital loss of (-) Rs.63,74,175/-. Hence, on the basis of the material available on record, the capital gain on the sale of property during the financial year 2016-17 is computed as under :

Sale consideration as per SRO valuation	Rs.67,32,000

Less :	Indexed cost of acquisition 100000 X1125 ---------- 100	Rs.11,25,000
	Capital Gain	Rs.56,07,000

Hence, the long term capital gain of Rs.56,07,000/- is to be taxed as per the provisions of Income-tax Act.

In this case, the acquisition cost of the property as per the property purchase deed submitted by the assessee was Rs.1,00,000/- and the sale consideration and SRO valuation as sold by the assessee in the year 2016 was Rs. Rs.67,32,000/-. After having all the correct information to compute the capital gains, the incorrect computation of the capital gains in the original as well as the Revised Return of Income amounts to mis-reporting of the income.

Despite several opportunities given, the assessee did not reply to any of these Notices and Letters except the sole reply dt.01/03/2019 to substantiate the capital loss claimed. Hence, penalty proceedings u/s.270A of the Act are initiated in this case separately.

5. Thereafter feeling aggrieved, the assessee preferred an appeal before the learned CIT (A) who also called upon the assessee to substantiate the evaluation of the property. However, the assessee was not able to substantiate and drew our attention to Para 6 to 6.5 of the learned CIT (A)'s order which is given below:

6. Grounds of appeal No.2 is adjudicated first, to understand the sequence of

events. The appellant, Sri P.Y. Sharma along with his wife purchased a property on 25.07.1980 vide document no. 7972/80 for Rs. 1,00,000/-. The same was sold by the appellant along with his wife vide sale deed no.1415/2016 dated 11.04.2016 for a consideration of Rs. 67,32,000/-.

6.1. The appellant's share in the said property is 50%, though, it is nowhere noted in the sale deed. However, as the property was jointly purchased and jointly sold by the appellant, the share of the appellant is adopted @ 50% as per his own claim. Thus, the sale consideration received by the appellant in lieu of his share is Rs. 33,66,000/- (50% of total sale consideration of Rs. 67,32,000/-).

6.2. Against this, the appellant claims indexed cost of acquisition on fair market value of the property adopted at Rs. 48,67,088/- instead of actual amount paid of Rs. 50,000/-(50% of the total amount paid). The appellant claimed that in view of specific provision of section 55, the cost of acquisition should be considered higher of Actual cost or fair market value as on 01.04.1981; and accordingly claimed that indexed cost of acquisition may be calculated at 48,67,088/-.

6.3. It is however pertinent to mention that the appellant has not produced any demonstrable or credible evidence in support of his claim.

6.4. Thus, in view of the above factual situation, the A.O. is directed to adopt the sale consideration of the appellant @ Rs. 33,66,000/- (50% of the sale consideration) and allow the indexed cost of acquisition @ 50% of Cost of the asset i.e. 50,000/- (50% of 1,00,000/-).

6.5. Thus, Ground of appeal no. 2 raised by the appellant stands **dismissed**.

6. The learned AR submitted that the delay in filing of the appeal is mainly on account of the ill health of the assessee and the assessee was not able to file the reply within the stipulated period under the Act. The valuation report at page 60 of the paper book whereby the value of the property was computed at Rs.8,65,000/-. It was submitted that given a chance, the assessee would be able to demonstrate that the value of the property was

Rs.8,65,000/- as against Rs.1.00 lakh taken by the Assessing Officer and therefore, one more opportunity may be given to file the claim before the Assessing Officer/learned CIT (A).

7. Per contra, the learned DR relied upon the decision of the Coordinate Bench in the case of Vishwabharati Mutually Aided Cooperative Credit Society vs. ITO in ITA Nos.360 to 364/Hyd/2022, order dated 13/02/2022 wherein we have the occasion to deal with the allowability of the condonation application, wherein we have held as under:

> *9. We have heard the rival submissions and perused the material on record. We have also carefully considered the reasons given by the assessee for the delay in filing of the appeal. In the reasons given by the assessee, it is mentioned that the Director of the assessee was not keeping the good health since 2011 and was indisposed for the purposes of filing the appeal.*
>
> *10. It is noticed that we are dealing with the assessment years A.Ys. 2010-11, 2011-12 and 2013-14 to 2015-16. From the perusal of the medical records submitted by the assessee, it is clear that the assessee was under some medical treatment. However, the medical treatment of the director of assessee society, only related to eye, cough, cardiovascular etc. For such diseases, it cannot be said that the assessee society was prevented from filing the statutory appeal before the ld.CIT(A). No evidence had been filled out showing that the director of the assessee was hospitalized for more than 6-7 years. Moreover the assessee had been regularly filing the return of income within the statutory periods, without any failure and assessee being the society can always authorized some other official of the society either president, secretary or joint secretary to file the appeal before the ld.CIT(A). In the light of above facts, the reasons submitted by the Director of the assessee company and sequence of events, we are of the considered view that the reasons given by the assessee in the condonation petition are not bona fide. Therefore, we are of the considered view that there is no merit in the reasons given by the assessee in the petition for condonation of delay filled before the ld.CIT(A) and he has rightly dismissed the petition filed by the assessee.*

11. Be that as it may, coming back to the legal position evolved by the decision of various High Courts, including the Hon'ble Supreme Court in number of cases, where it has been time and again, held that when merits and technicalities pitted against each other, then merit alone deserves to be prevailed because, if you throw out a meritorious case out of judicial scrutiny on the grounds of technicalities, then you may deprive the right of the petitioner in pursuing their case. At the same time, various Courts have held that rules of limitation are not meant to destroy the rights of parties, they are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly, within the time bound prescribed under the Act.

12. Further, in a case, where, for the reasons beyond the control of the petitioner, the appeal could not be filed, then the Courts are well equipped with power to condone the delay, if the petitioner explains the delay in filing of the appeal with a reasonable cause. However, there is no law or mandate in the Act, to condone the delay in each and every case. But, it depends upon all facts of each case and the reasons given by the parties for condonation of delay. Therefore, one has to go by the facts of its own case and the reasons given by the petitioner for condonation of delay.

13. In these set of appeals, on perusal of reasons given by the assessee for delay in filing of the appeal before the ld.CIT(A), we find that although it appears that the assessee is not deriving any benefit by not filing the appeal within the due date prescribed under the Act before the ld.CIT(A), but, from contents of petition filed by the assessee before the lower authority, we could easily make out a case that the assessee has made an afterthought to file the appeal before the ld.CIT(A). The assessee society is not governed by an individual rather it has many members in its governing body and therefore, the alleged illness of the one of the directors of assessee society will not prevent the other office bearers of the assessee to file the appeal before the ld.CIT(A) against the order passed by the Assessing Officer. Therefore, in our considered view, for these vague reasons, such huge delay of 3047 days in filing of the appeal before the lower authority, cannot be condoned.

14. Further, the assessee's reasons in the condonation petition do not come under .reasonable cause. as prescribed under the Act, for condonation of delay and the explanation given by the assessee for delay is not proper and casual in nature. The reasons given by the assessee are devoid of any merit and not sustainable in the eyes of law. The law requires the assessee to be vigilant and careful in prosecuting its rights under the Act. Considering the totality of the facts and circumstances of the case and the conduct of the assessee, we do not find any reason to entertain the present appeal as the same is barred by limitation.

15. We also draw strength from the decision of Hon'ble Supreme Court in the case of Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and others (Civil Appeal No.7696 of 2021 dt.16.12.2021 relied upon by the ld.DR, wherein the Hon'ble Supreme Court dismissed the condonation petition. The facts of this case are identical to the facts of the present case. The Hon'ble Supreme Court at Para 6.2 had reproduced the facts of the case to the following effect :

"6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously."

In our view, the facts of the present appeal are identical rather situated in a worse footing than that of the case of Majji Sannemma @ Sanyasirao (supra). Hence, the ld.CIT(A) was right in dismissing the condonation application and the appeal of the assessee. We do not find any reasons to interfere with the finding of ld.CIT(A) and accordingly, the appeal of assessee is dismissed. We have not discussed the other decisions cited by the ld.DR, mentioned hereinabove as the decision in the case of Majji Sannemma @ Sanyasirao (supra) was latest in time. Further, the decisions referred by the ld.AR were all prior to the decision in the case of Majji Sannemma @ Sanyasirao (supra) and are distinguishable on facts.

16. In the result, the appeal of assessee in ITA No.360/Hyd/2022 is dismissed."

8. It was submitted that the explanation given by the assessee is not satisfactory and the appeal was filed after a gap of 413 days, therefore, the appeal of the assessee is required to be dismissed.

9. On merit, it was submitted that the Assessing Officer has granted time to the assessee to file the valuation report during the assessement proceedings and thereafter, before the learned CIT (A). However, the assessee failed to avail the opportunity. In fact, it is the case of the assessee that the Assessing Officer has merely relied upon the registered sale document, taken the value declared therein in the said registered document. It was submitted that the reports now filed by the assessee is without filing application for admission of additional evidence as per Rule 29 of ITAT Rules, 1963 and further valuation report dated 18.3.2016 cannot be relied upon as it deems to be manufactured as no reasons were given explaining that the assessee was prevented to file the said report before the Assessing Officer/learned CIT (A). Thus, the said report dated 18.3.2016 which is prior to the date of the passing of the assessment order and the appellate order, cannot be relied upon.

10. We have heard the rival contentions of both parties and perused the record. In this case, we notice that the notice u/s 142(1) was issued on 30.01.2019 and the assessee has filed the reply only on 1.3.2019 and the assessment order was passed by the Assessing Officer on 5.12.2019. The assessee filed appeal before the learned CIT (A) who granted part relief to the assessee on 21.7.2022.The consequential order was passed by the Assessing Officer on 8.8.2022. The assessee was supposed to file the appeal within 60 days i.e. on or before 20.9.2022. Instead, the

assessee preferred the appeal before the Tribunal only on 6.11.2023. Admittedly, during the period, the assessee has sought to justify for not filing appeal, before the Tribunal, on the basis of medical record filed before us which are placed at Page Nos.70 to 114 of the paper Book. From the perusal of the above documents, it is clear that after passing the order dated on 21.7.2022, the assessee was not incapacitated for any reason for not preferring the appeal before the Tribunal. In fact, the assessee waited for passing of the consequential order which was passed on 8.8.2022. There is no impediment or incapacity of the assessee after passing the impugned order on 21.7.2022 till November, 2023 for not filing the appeal before the Tribunal. Inspite of that, if we consider the documents and contents of application now filed before us on 22.5.2024, it was the case of the assessee that he was not aware of passing of the appellate order and was not versed with the due date of filing of the appeal before the Tribunal and further submitted that the assessee could not file the appeal on account of circumstances beyond his control. The assessee himself has filed the appellate order for giving effect before the Assessing Officer, hence it is clear that the plea of the assessee that he was not aware about the order and also the procedure for filing of the appeal is incorrect. The stand taken by the assessee is incorrect as on a perusal of the order giving effect at page 21, it is abundantly clear that the relief has been granted by the ITAT on 31.03.2022 and the income was revised for Rs.34,03,790/-. Thus, the submissions of the assessee that the assessee was not aware

about the filing procedure is not correct. Further, we may rely upon the decision in the case of Vishwabharati Mutually Aided Cooperative Credit Society vs. ITO (Supra) and from that there is no justifiable reason to condone the delay. In view of the above discussion, the delay in filing is not willful or wanton is not accepted. Hence the application for condonation of delay and appeal are dismissed.

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 12th June, 2024.

Sd/-	Sd/-
(MADHUSUDAN SAWDIA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 12th June, 2024
Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Sharma Yegnnarayana Praturi, 4-1-1233, 2nd Floor, Flat No.2B Subhodaya A;partments, Beside Fernadez Hospital, Boggukunta, Hyderabad Telangana 500001
2	Income Tax Officer (International Taxation)-2, 5th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order