

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.482/PUN/2024
Assessment Year : 2013-14**

Anuradha Ashok Satbhai Balaji Aangan b/h Shriram Mandir Road, Kopergaon, Ahmednagar – 423601	Vs.	ITO, Ward-1, Ahmednagar
PAN: DJQPS6681R		
(Appellant)		(Respondent)

Assessee by : Shri Manish Somani
Department by : Shri Pawan Bharati
Date of hearing : 18-06-2024
Date of pronouncement : 28-06-2024

ORDER

PER R.K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 10.01.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2013-14.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the order of CIT(A) / NFAC in sustaining the penalty of Rs.3,30,862/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by not condoning the delay of 214 days in filing of the appeal before him.

3. Facts of the case, in brief, are that the assessee is an individual and had filed her return of income declaring total income of Rs.65,05,317/-. The case of the assessee was reopened on the ground that the assessee has sold an immovable property for Rs.1,50,00,000/- having the agreement value of Rs.2,49,00,000/- and offered capital gain of Rs.1,20,00,000/-. Accordingly, notice u/s 148 of the Act was issued, in response to which the assessee did not file any return. The Assessing Officer thereafter issued statutory notices u/s 143(2) and 142(1) of the Act, in response to which the assessee filed certain details. After considering the details furnished by the assessee from time to time, the Assessing Officer determined the total income of the assessee at Rs.1,80,11,445/- by making addition of Rs.1,15,06,128/- as Long term capital gains being the difference between the value of the property as per stamp valuation authority of Rs.2,49,00,000/- less the cost of acquisition with indexation considering the share of the assessee at Rs.69,31,872/-. Since the assessee had already declared capital gain of Rs.64,62,000/-, the Assessing Officer brought the balance amount of Rs.1,15,06,128/- to tax.

4. The assessee preferred an appeal before the CIT(A) / NFAC, who partly allowed the appeal in favour of the assessee and sustained an addition of Rs.16,06,128/-. The Assessing Officer thereafter initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee, the

Assessing Officer levied penalty of Rs.3,30,862/- being the tax @ 100% on the amount of Rs.16,06,128/- which was sought to be evaded.

5. The assessee filed an appeal before the CIT(A) / NFAC with a delay of 214 days. The CIT(A) / NFAC dismissed the appeal filed by the assessee on account of delay by stating that the assessee did not show any cogent and sufficient reasons to enable condonation of the delay.

6. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset drew the attention of the Bench to para 3.1 of the order of CIT(A) / NFAC wherein it was stated as under:

“3.1...

The Appellant is a senior citizen. The Appellant was unaware of the fact that order imposing penalty is passed against her as she did not receive the penalty order via email or via post. It came recently to the notice of the Appellant when she received a notification from department for payment of outstanding demand. Thus, there has been delay of 214 days in filing of the appeal. The delay is attributable to non-receipt of penalty order. The delay in filing of appeal is neither deliberate nor willful and there is no malafide intention on the part of the Appellant. The Appellant humbly prays before Your Honour to cone the delay in filing of appeal against the order of the learned AO and admit the appeal filed by the Appellant.”

8. Referring to the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST. Katiji & Ors reported in 167 ITR 471 (SC),

he submitted that the delay in filing of the appeal should be condoned and the CIT(A) / NFAC should be directed to decide the issue on merits.

9. The Ld. DR on the other hand heavily relied on the order of CIT(A) / NFAC.

10. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC. It is an admitted fact that due to delay in filing of the appeal before the CIT(A) / NFAC by 214 days, the CIT(A) / NFAC did not condone the delay and dismissed the appeal by stating that the assessee did not explain any cogent and sufficient reason to enable the condonation of delay. It has been held by the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST. Katiji & Ors (supra) that 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. It was further held that 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. In view of the above ratio laid down by the Hon'ble Supreme Court in Collector, Land Acquisition vs. MST. Katiji & Ors (supra), we direct the CIT(A) / NFAC to condone the delay and decide the appeal on merits. Needless to say, the CIT(A) / NFAC shall decide the issue as per fact and law after providing due opportunity of being heard to the assessee. We hold

and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28th June, 2024.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 28th June, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	19.06.2024		Sr. PS/PS
2	Draft placed before author	25.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			