

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE MS. ASTHA CHANDRA, JUDICIAL MEMBER
AND
SHREE G.D. PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.248/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Prasad Dattatrya Thakar, Plot No. 9, Mulberry Garden-III, Magarpatta City, Hadapsar, Haveli, Maharashtra-411013 PAN : AAZPT5238Q	Vs.	Deputy Commissioner of Income Tax, Circle – 14, Pune
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri Pramod S. Shingte
Department by :	Shri Sourabh Nayak
Date of hearing :	10-05-2024
Date of Pronouncement :	18-07-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the assessee is directed against the order dated 22.12.2023 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["CIT(A)"] pertaining to Assessment Year ("AY") 2014-15.

2. The assessee has raised the following grounds of appeal:-

"1. On the facts and the circumstances of the case and in law, learned CIT Appeal NFAC erred in rejecting the appellants appeal by not condoning the delay of 40 days which has caused due to certain medical emergencies, your appellant prays for condoning the delay and adjudication of appeal in merit.

Without prejudice to the above ground, following grounds are taken on merit.

2. On the facts and the circumstances of the case and in law, learned Assessing Officer erred in treating the entire gross receipt received on account of sale of property a sum of Rs.1,07,50,000 a long term capital gain, without allowing the deduction on account of indexed cost of acquisition as per the provision of law.

3. On the facts and the circumstances of the case and in law, learned Assessing Officer erred in not allowing the deduction under section 54 of the Act. In spite of the fact that assessee has constructed a new house and full filled all the conditions prescribe in section 54 of the IT Act, 1961, and is eligible for the deduction.

Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing."

3. The facts in brief are that the assessee is a Civil Contractor. He filed return for AY 2014-15 on 28.11.2014 declaring income of Rs.51,61,287/-. The case was selected for scrutiny under CASS and accordingly statutory notice u/s 143(2) of the Income Tax Act, 1961 (**the "Act"**) was issued on 31.08.2015 which was duly served on the assessee. From the AIR data of the assessee, the Ld. Assessing Officer ("**AO**") found that the assessee has sold a property valued at Rs.1,07,50,000/- during the year but has not shown the income from Capital Gain. On query raised by the Ld. AO, the assessee submitted that the income from sale of property has been invested a new properties and claimed deduction u/s 54 of the Act. Therefore, no income from Capital Gain has been offered.

4. The explanation of the assessee was not acceptable to the Ld. AO for the reason that the assessee had neither disclosed the sale of property nor any deduction is claimed in his return of income. The assessee has purchased a land one year before and no construction has been completed on or before the stipulated time u/s. 54 of the Act. Thus, the conditions u/s 54 of the Act have not been complied with. The Ld. AO, therefore, made an addition of Rs.1,07,50,000/- to the income of the assessee on account of Capital Gain and completed the assessment on total income of Rs.1,59,11,290/- on 13.12.2016 u/s 143(3) of the Act.

5. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) taking the ground that the assessee be allowed to claim deduction u/s. 54 of the Act for investment made in construction of house property during the relevant AY 2014-15. During the appellate proceedings complete detailed working of Capital Gain was furnished as per which there was no effective Capital Gain Tax. CBDT Circular No. 14(XL-35) dated 11.04.1955 was cited in support. It was submitted that the action of the Ld. AO in treating the entire sale consideration as Capital Gain is incorrect on facts as well as in law and deserved to be deleted.

6. The Ld. CIT(A), however, noticed that the appeal before him was delayed by 40 days and in para 15 of Form No. 35 the reasons for delay was attributed to "medical grounds". In the absence of medical certificate in support of the said delay, the Ld. CIT(A) held that the assessee failed to furnish sufficient cause to explain the delay and dismissed the appeal of the assessee.

7. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds relate thereto and the impugned addition.

8. The Ld. AR submitted that the Ld. CIT(A) has dismissed the appeal of the assessee by not condoning the delay of 40 days in filing the appeal before him. He submitted that the delay was caused due to medical emergencies which were beyond the control of the assessee. He contended that before the Ld. CIT(A) complete Capital Gain tax working was provided which form part of the appellate order but instead of deciding the appeal on merits, the Ld. CIT(A) chose to dismiss the appeal only on the ground of delayed filing.

9. We have considered the submissions of the parties and perused the records. We are of the view that in the interest of justice and fair play it would be judicially expedient to send back the matter to the Ld. CIT(A) with a direction to him to condone the delay and decide the appeal on merits. Accordingly, we set aside his order and restore the matter back to his file to condone the delay and decide the appeal afresh on merits after allowing reasonable opportunity of being heard to the parties. We order accordingly.

10. In the result, the appeal of assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 18th July, 2024.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th July, 2024.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune