

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3487/Mum/2024
(Assessment Year :2012-13)**

| | | |
|--|-----|---|
| Mr. Cyrus Shroff 181 Lower Mortlake Road Richmond, Greater London TW9 2LP, UK | Vs. | Income Tax Officer (IT) Ward 4(2)(1) Ballard Estate Mumbai |
| PAN/GIR No.DZJPS0678M | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|-------------------|
| Assessee by | Ms. Usha Kadam |
| Revenue by | Shri Anil Sant |
| Date of Hearing | 13/08/2024 |
| Date of Pronouncement | 22/08/2024 |
| | |

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 08/05/2024 passed by Id. CIT(A)-58, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2012-13.

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

"1.1 The Learned CIT(A) has erred in not condoning the delay of 1,430 days in filing the appeal thereby denying the justice without appreciating the fact that the appellant was residing in United

Kingdom and had appointed a Representative assessee in India who had filed his affidavit providing the sufficient cause for delay in filing appeal. The CIT(A) has erred in appreciating the fact that refusing to condone delay has resulted in a meritorious matter being thrown out at the every threshold and cause of justice being defeated.

1.2 We further submit that where the appellant had acted diligently in safeguarding his legal rights and availing remedies available to him, and had acted on basis of advice and assistance from his legal counsels and since there was no culpable negligence or mala fide on appellant's part in delayed filing of appeal, delay in filing appeal be condoned

21 The assessing officer has erred in making an addition of Rs 1,63,55,827/- under the head Capital Gains by denying the deduction u/s 54 of the Income tax Act and CIT(A) erred in not considering the merits of the case

2.2 The Learned CIT(A) erred in upholding the rejection of the appellant's claim of deduction u/s 54 on the ground that the relief under section 54 will be available to the appellant only if the residential house is purchased in India.

2.3 Without prejudice to above, it is further submitted that section 54 has been amended by the Finance (No. 2) Act 2014 so as to provide that the relief under section 54 will be available to the assessee only if the residential house is purchased in India. However, it is stated that this amendment will take effect from 1st April, 2015 and will accordingly apply in relation to assessment year 2015-16 and subsequent assessment years. Thus the denial of the exemption u/s 54 to the appellant would mean applying this amendment retrospectively to the appellant which is unjust and invalid in law”.

3. Thus, the ld. CIT(A) has dismissed assessee's appeal on the ground that there was a delay in filing of appeal of 1430 days.

4. Before us it has been stated that assessee is a non-resident Indian, a citizen of United Kingdom and has been living in UK since 1908s. Since assessee has inherited ancestral property in India which was sold and has claimed

reduction u/s.54, assessment was made by the ld. AO denying the claim of deduction and for that reason assessee has to file return on 31/08/2012. The assessment order was passed on 27/02/2015, however, assessee was not aware of passing of any assessment order in support of the reason for delay in filing of appeal before the ld. CIT(A), following the affidavit of the representative of the assessee has been given:-

FOR UNION BANK OF INDIA
M. S. MARG, BRANCH

UNION BANK OF INDIA
MUMBAI SARVA CHARA MARG, BRANCH
PLANNING & DEVELOPMENT DEPARTMENT,
64/28, MUMBAI SARVA CHARA MARG,
FORT, MUMBAI-400 023
D. 55TPVVC.R.18082320942185-8764

भारत 02158
147306
भारत
Special Adhesive
MAR 26 2019
11:23
R.0000100/-PB5062
INDIA STAMP DUTY MAHARASHTRA

K. SHETTY B.A.L.L.M.
Notary Public Over India
Reg. No. 195,
NOTARY GOVT. OF INDIA

AFFIDAVIT

I, Mr. Subodh Mody, Representative Assessee for Mr. Cyrus Noshir Shroff, aged 60 years, having office at Agra Building, 1st Floor, 121, Mahatma Gandhi Road, Fort, Mumbai 400001, do hereby solemnly affirm on oath as under :

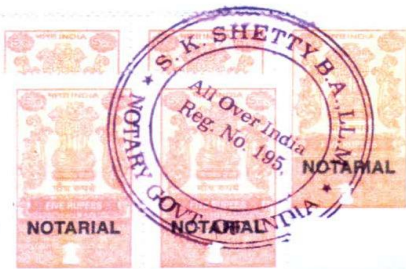
- 1) That, Mr Cyrus Shroff was residing at 36, West Court, Great West Road, Hounslow TW, 5 DTL UK. He had filed its income tax return for A.Y. 2012-13 on 31.08.2012. A notice u/s 143(2) dated 12.08.2013 for A.Y. 2012-13 was served on the assessee at his London address. The said notice was sent to me by Mr Shroff.
- 2) I had appointed Gaglani & Associates, Chartered Accountants to represent the assessment proceedings before the assessing officer as my office and their office was in the same building i.e. Agra Building. All the notices of the assessing officer were collected by them directly and the replies to the said notices were also submitted by them directly. We were informed by them that they are regularly attending the proceedings.
- 3) I was unwell in 2015, hence I completely relied on Gaglani & Associates for handling the matter. They shifted their office from Agra Building without informing me about the location of their new office. They had neither informed me about the outcome of the assessment proceedings nor provided any copy of the assessment order. Hence I was under the impression that the assessment proceeding has been completed without any adverse implications.
- 4) As per the return of income filed there was refund of Rs 63,49,300 due to the assessee. The said refund was not received by him. Hence my office staff was visiting the income tax office, trying to find out the reason for the same. After lot of efforts, my office was provided on 19.03.2019 a the copy of assessment order dated 27.02.2015 wherein the addition of Rs 1,63,55,827 was made and demand of Rs 6,390 was raised. I am now filing an appeal against this order. Hence it may be considered that there is delay in filing the appeal.
- 5) As the assessment order was to be served on the assessee on or before 31.03.2015, assuming that the order would have been received on 31.03.2015, the last date to file an appeal before CIT (Appeal) would have been 30.04.2015. Based on this there is a delay of 1,430 days in filing the appeal before CIT (A) due to the reasons stated as above.

6) In the above circumstances, the appeal is delayed by about 1,430 days.

I further affirm that whatever is stated above is true to the best of my knowledge and belief.

✓ Given this 26th day of March, 2019.

CS/



Deponent
BEFORE ME
S. K. SHETTY B.A., LL.M.
ADVOCATE
NOTARY GOVT. OF INDIA
8, "Prakash", Bestant Street,
Santacruz (W), Mumbai - 400 054.

this document is noted at Mumbai
Sr. No. 944 Date 26 MAR 2019 in the
Notarial Register



4. Looking to the fact that assessee Mr. Cyrus Shroff was resident of United Kingdom and he has appointed Mr. Subodh Mody as representative of assessee and Mr. Subodh Mody appointed Gogiani & Associates, Chartered Accountants to represent the case. But he did not inform nor received the

assessment order. Thus, under these facts it can be held that there was a bonafide and genuine reason for filing the appeal belatedly. Accordingly, we are remitting this matter back to the file of the ld. CIT (A) after condoning the delay to decide the appeal on merits.

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

Order pronounced on 22nd August, 2024.

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 22/08/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai