

**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.813/PUN/2024
Assessment Year : 2014-15**

Arun Namdeo Keni At Pethali, Post. Taloja, Tal. Panvel, Dist. Raigad – 410208	Vs.	ITO, Ward-5, Panvel
PAN: AMGPK2155A		
(Appellant)		(Respondent)

Assessee by : Dr. P Daniel
Department by : Shri Keyur Patel, CIT-DR
Date of hearing : 04-07-2024
Date of pronouncement : 12-09-2024

ORDER

PER ASTHA CHANDRA, JM :

This appeal filed by the assessee is directed against the order dated 27.02.2024 of the CIT(A) / NFAC relating to assessment year 2014-15.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the CIT(A) / NFAC in dismissing the appeal of the assessee for non-prosecution and thereby sustaining the addition made by the Assessing Officer.

3. Facts of the case in brief, are that the assessee is an individual engaged in business and filed his return of income on 21.12.2015 declaring total income at

Nil. The case was selected for scrutiny under 'CASS' and accordingly, statutory notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was issued and served on the assessee. During the year under consideration, the assessee had entered into a sale agreement dated 11/12/2013 with M/s. R.D. Builders for transfer of his rights in respect of plot No.80, Sector-23, admeasuring 1200 sq. mtrs. at village Taloje-Panchanand for a consideration of Rs.6 crore. The Assessing Officer noted that the assessee has taken sale consideration at Rs.5,18,85,959/- instead of Rs.6 crore by claiming indexed cost of acquisition at Rs.2,57,94,502/- and deduction of Rs.2,60,91,457/- u/s 54 of the Act. Since the assessee did not furnish any evidence in this regard, the Assessing Officer completed the assessment by making addition of Rs.6 crores under the head "Short term capital gains" and Rs.79,090/- as interest income.

4. Since the assessee did not appear before the CIT(A) / NFAC, the Ld. CIT(A)/ NFAC in the *ex-parte* order passed by him did not condone the delay and dismissed the appeal filed by the assessee.

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

6. The Ld. Counsel for the assessee at the time of hearing submitted that the appeal for assessment year 2013-14 is still pending before the CIT(A) / NFAC. Further, the delay in filing of the appeal before the CIT(A) / NFAC was also

explained before him which was due to the oversight of the Accountant of the firm who kept the appeal memo in his drawer and forgotten to file the appeal. It was also explained that the assessee is an illiterate farmer and he was ignorant of the provisions of law. Further, the CIT(A) / NFAC had also called for a remand report from the Assessing Officer for which the assessee was under the bonafide impression that he has condoned the delay by admitting the appeal for adjudication. Relying on various decisions, he submitted that in the interest of justice, the delay in filing of the appeal before the CIT(A) / NFAC be condoned and the assessee should be given an opportunity to substantiate his case before the CIT(A) / NFAC.

7. The Ld. DR on the other hand opposed the above contention of the Ld. Counsel for the assessee and submitted that despite number of opportunities granted, the assessee did not appear before the CIT(A) / NFAC. Further, there was a delay of 211 days in filing of the appeal before the CIT(A) / NFAC for which no proper reason was given. Therefore, the CIT(A) / NFAC was fully justified in dismissing the appeal.

8. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. We have also considered the various decisions cited before us. We find there was a delay of 211 days in filing of the appeal before the CIT(A) / NFAC for which he did not condone the delay. Further, due to non-compliance from the side of the assessee,

he dismissed the appeal for want of prosecution. It is the submission of the Ld. Counsel for the assessee that the appeal for assessment year 2013-14 is still pending before the CIT(A) / NFAC and the delay in filing of the appeal was also explained before the CIT(A) / NFAC.

9. From the various details furnished by the assessee, we find the assessee is a farmer. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji & Ors. reported in 167 ITR 471 (SC) has held 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 has further held that refusing to condone the 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 light of the above decision of the Hon'ble Supreme Court and considering the fact that the appeal for assessment year 2013-14 is still pending before the CIT(A) / NFAC, we deem it proper to restore the issue to the file of the CIT(A) / NFAC with a direction to condone the delay and decide the appeal as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to make his submissions before the CIT(A) / NFAC on the appointed date without seeking any adjournment under any pretext, failing which the CIT(A) / NFAC is at

liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 12th September, 2024.

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

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 12th September, 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
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	11.09.2024		Sr. PS/PS
2	Draft placed before author	11.09.2024		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			