

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.1879/Mum/2024  
Assessment Year: 2013-14**

Shashikant Krishna Shetty  B Wing, 303 Yoshoda Apartment, Purandare Colony Syndicate, Kalyan West, Thane, Maharashtra-421301.  <b>PAN: BIGPS 8076 P</b>  (Appellant)	Vs.	Income Tax Officer- 3(2), Kalyan          (Respondent)
---	-----	---

**Present for:**

Assessee by : Shri Brijesh Vyas  
Revenue by : Dr. Kishor Dhule, CIT, DR

Date of Hearing : 09.07.2024  
Date of Pronouncement : 24.09.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 08.03.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

*"1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in denied the condonation of delay of 103 days in filing appeal before CIT(A) as appellant prevented from reasonable cause and the reasons were beyond his control.*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to appreciate that if the delay was not condone then appellant will suffer badly and tax will be charge for the sale of property which is already taxed in AY 2012-13 and tax will be levied for a wrong transaction which never happen.*

3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment proceeding initiated under section 148 of Income Tax Act, 1961.*

4. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs 70,00,000 on account of unexplained investment under section 69 of Income Tax Act, 1961, without considering the fact transaction is pertain to sale of shop pertain to AY 2012-13 and nothing is purchased in AY 2013-14.*

5. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs 11,48,35,000 on account of Long Term Capital Gain under section 48 of Income Tax Act, 1961 without considering the fact that shop is sold for Rs.70,00,000/- in AY 2012-13 and Stamp value was Rs. 1,14,83,500/-, but the Ld. AO added 1 zero extra in value and added Rs. 11,48,35,000/- as long term capital gain which is bad in law.*

6. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs 27,50,000 on account of unexplained investment under section 69 of Income Tax Act, 1961 without considering the fact that the source of investment in FDR is sale of shop for Rs. 70,00,000/- in AY 2012-13.*

7. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming charging of Interest under section 234A, 234B and 234D of Income Tax Act, 1961.*

8. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming initiation of penalty proceedings u/s 271(1)(c), 271F and 271(1) (b) of the Income Tax Act, 1961.*

9. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

2. Fact in brief is that assessee has not filed return of income for the A.Y. 2013-14. On the basis of information available the assessee had sold an immovable property for more than Rs. 30,00,000/- and also purchased immovable property valued at Rs. 70,00,000/- during the F.Y. 2012-13 and also that assessee had taken friendly loan, the case of the assessee was reopened by

issuing of notice u/s 148 of the Act. However, during the course of the assessment proceedings, the assessee has not made any compliance, therefore, assessment was finalized ex-parte u/s 144 r.w.s. 147 of the Act and total income was assessed at Rs. 12,45,85,000/- after making addition of unexplained investment and long term capital gain earned on the sale of the property during the year under consideration.

3. The assessee filed appeal before the ld. CIT(A). However, the ld. CIT(A) has not decided the appeal on merit and dismissed the same by not condoning the delay in filing the appeal. During the course of appellate proceedings before us, the ld. Counsel vehemently submitted that assessee was educated upto 12<sup>th</sup> standard therefore he could not keep track on the e-mail communication made to the assessee in respect of the notices issued and the assessment order passed by the assessing officer which resulted delay in filing the appeal before the ld. CIT(A). Therefore, the ld. Counsel submitted that ld. CIT(A) is not justified in dismissing the appeal of the assessee on the reason of delay in filing the appeal without considering the appeal of the assessee on merit.

4. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above, the ld. CIT(A) has not adjudicating the appeal filed by the assessee against the ex-parte order passed by the assessing officer on account of delay in filing the appeal by 103 days before the ld. CIT(A) as discussed. In this regard, we find in the submission of the assessee that

assessee could not keep track on the communication made on the e-mail by the assessing officer because he was not very active on the digital mode because of not very educated. Considering the submission of the assessee, we find that there is reasonable cause for delay in filing the appeal before the Id. CIT(A), therefore, following the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiii And Others 167 ITR 471 (SC), we condone the delay in filing the appeal before the Id. CIT(A). Further, we find gross error in the assessment order as pointed out by the assessee that AO has added extra zero value to the stamp value by taking Rs. 11,48,35,000/- as against correct stamp value of Rs. 11,48,35,000/- which had also been overlooked by the Id. CIT(A). In the light of the facts and circumstances, we restore the case to the file of the Id. CIT(A) for adjudicating on merit as contemplate u/s 250(6) of the Act after affording adequate opportunities to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 24.09.2024.

**Sd/-**  
**(MS. KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 24.09.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai