

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No.4457/Mum/2023  
(Assessment Year: 2011-12)**

<b>Mr. Jainkumar Manikam Menon,</b> 8, Bhagwati HOSP Compound Tulsi Baug, S.V. P Road, Borivali West, Mumbai-400103. <b>PAN : AKZPM7998L</b>	Vs.	<b>International Taxation-3(2)(1),</b> 16 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : None

**Revenue / Respondent by** : Ms. Rajeshwari Menon, Sr. DR

**Date of Hearing** : 07.10.2024

**Date of Pronouncement** : 09.10.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 10.10.2023 for Assessment Year (AY) 2011-12. The assessee has raised the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the order passed by the Ld. A.O. u/s 143(3) r.w.s. 147 is arbitrary, unjustified and bad-in-law.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by not considering the facts that the Ld. A.O. has not provided copy of*

*reasons for reopening of assessment proceedings before passing the assessment order and the same is bad in law.*

*3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by ignoring the fact that addition made by the Ld. A.O. u/s 69A by considering the disclosed income of Rs. 25,80,000/- under the head "Income from Capital Gains" as undisclosed income.*

*4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by ignoring the fact that amount of addition is part and parcel of sale consideration of the property and same has already been offered in his return of income under the head "Income from Capital Gains".*

*5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by ignoring the fact that part of sale consideration has been deposited by the appellant in his bank account and the same has already been disclosed in his books of accounts.*

*6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred by not considering the request and facts for delay in filing of appeal and dismissed the appeal of the appellant.”*

2. The assessee is an individual and did not file the return of income for the year under consideration. The Assessing Officer (AO) noticed from the information available in ITD System that the assessee has undertaken large financial transaction during the previous year relevant to AY 2011-12. Based on the said information the assessment stating that the assessee has sold immovable property and deposited cash above Rs. 10,00,000/- in the Savings Bank A/c but failed to file the return of income. The AO completed the assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) by making an addition of Rs. 25,80,000/- under section 69A of the Act stating that

*“3.5 The assessee has failed to provide a clearly visible and legible copy of the sale agreement inspite of being given multiple opportunities. The translations submitted by the assessee, are not certified or signed and is contradictory to each other. Further the assessee has not explained the reasons as to why he received the consideration partly in cash and partly through cheques and DDs. He has also not explained as to why the cash received by him on 01.04.2010 was deposited in on 09.06.2010 i.e. almost after 70 days after receiving the cash and why was he keeping such a large amount of cash with himself.*

*3.6 As discussed above, the explanation of the assessee as regards to cash deposit of Rs. 24 lakhs in his bank account on 09.06.2010 remains unexplained. As the assessee not denied the ownership of the money and has also failed to provide a satisfactory explanation, the provisions of section 69A of the Act is clearly applicable and the assessee is therefore owner of the unexplained money of Rs. 25,80,000/- during the previous year. This unexplained money is added to the income of the assessee under section 69A of the Act. Penalty proceedings u/s 271 (1)(c) of the Act, are separately initiated for concealment of income.”*

3. Aggrieved the assessee filed an appeal before the CIT(A). There was a delay of 66 days in filing the appeal before the CIT(A). The assessee submitted before the CIT(A) that the bank account of the assessee was attached and the physical copy of the assessment order was provided by the Bank post which the appeal was filed belatedly. The CIT(A) called for further details in this regard to which the assessee did not respond. Therefore, the CIT(A) dismissed the appeal without condoning the delay.

4. None appeared for the assessee and we heard the ld. DR. The assessee's case was reopened for the reason that the assessee has deposited a sum of Rs. 51,60,000/- in the bank account. The assessee submitted before the AO that the amount was received as a consideration towards sale of a property and submitted

agreement entered into in this regard. The AO found the document filed by the assessee to be illegible and called on the assessee to furnish clear copy. Since the document filed by the assessee was not providing sufficient details, the AO based on the available document made an addition of Rs. 25,80,000/- under section 69A of the Act. The CIT(A) dismissed the appeal for the reason that there was a delay of 66 days in filing the appeal and that the assessee could not provide reasons justifying that there was sufficient cause for delay in filing the appeal. Considering the facts peculiar to the case and in the interest of natural justice and fair play, we are inclined to give one more opportunity to the assessee by remitting the appeal back to the CIT(A) for a denovo consideration. The assessee is directed to file an affidavit explaining the reasons for delay in filing the appeal before the CIT(A). The CIT(A) is directed to consider sufficiency of cause for delay based on the affidavit to be filed by the assessee and take a pragmatic view in accordance with law. It is ordered accordingly.

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

*Order pronounced in the open court on 09 -10-2024.*

*Sd/-*  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**