

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No.5012/Mum/2024
(Assessment Year: 2020-21)**

Sandeep Sundar Bhoir, Yogesh Smruti, Reti Bunder Road, Motha Gaon, Dombivli, Maharashtra-421202. PAN : AKGPB7559M	Vs.	CIT(A) / National Faceless Appeal Centre, Delhi.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Rohit C. Kapure, AR

Revenue / Respondent by : Shri Swapnil Sawant, Sr. DR

Date of Hearing : 21.11.2024

Date of Pronouncement : 25.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeals Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 10.07.2024 for Assessment Year (AY) 2020-21. The assessee raised the following ground of appeal –

“1. The Learned Assessing officer has not considered the provisions of section 2(14) and explanation (d) to section 56(2) clause (vii) while applying section 56(2)(x) while passing the Assessment Order. In pursuance the said order

demand of Rs. 39,76,208/- (Rupees Thirty Nine Lakhs Seventy Six Thousand Two Hundred and Eight only) was raised against the Appellant.

2. The transaction under consideration is purchase of Agricultural Land by the Appellant and his real brother in equal proportions. The Status of the Agricultural Land is supported by: i. 7/12 extracts which are annexed to the agreement for sale wherein the fact that Agricultural activities are carried out on the said Agricultural Land ii. Population certificate of the Gram Panchayat where the Agricultural land is situated. iii. Distance Certificate issued by Public Works Department, Government of Maharashtra Murbad office stating that the Agricultural Land is situated at a distance of 25.50 kms from Murbad Municipal Corporation.

3. The Learned Assessing Officer has invoked the provisions of section 56 clause (2) sub clause (x)(b)(B) and assessed the differential amount between the ready reckoner value and agreement value as "Income from other sources". The Appellant would like to invite attention of the Authority to the explanation given under section 56 clause (2) where in it is stated that:

"Explanation.-For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the Explanation to clause (vii)." The relevant explanation to clause vii states that: "property" means the following capital asset of the assessee, namely: (i) immovable property being land or building or both;" The Appellant would like to state that the provisions of section 56 clause (2) sub clause (x)(b)(B) are to be read with the explanation given for the said clause and not in isolation.

4. The Appellant would like to state that the arrangement of taxability under section 56 clause (2) sub clause (x)(b)(B) is for "Capital Asset" and not for Agricultural Land which does not constitute a capital asset.

5. The Appellant states that the present transaction of purchase of agricultural land is out of the purview of section 56 clause (2) sub clause (x)(b)(B) and hence, the assessment is completed on the basis of incorrect interpretation of the Income Tax Act and hence, needs to be set aside.

6. Without prejudice to the arguments put forward in clause 1 to 5 above, the Appellant would like to state that, he has obtained on record Valuation Report certified by Mr. Gandhe (Government approved valuer bearing registration no. CAT.I 3012 of 1973) wherein the valuation of the entire subject land is certified as Rs. 11,17,500/- as on the date of the transaction. The Appellant has already

challenged the valuation as computed by the Deputy Registrar Murbad as the difference in the valuation report and determination of value by the Deputy Registrar is unreasonable. The Appellant states that the agreement value of the purchase of Agricultural Land is much more than the value certified by the Government approved valuer and as such the invoking of provisions of section 56 clause (2) sub clause (x)(b)(B) is unwarranted.

7. The Ld. CIT Appeals has not considered the Appeal read with the supporting documents and as such has not considered the merits of the said Appeal as presented by the Appellant.

8. The Ld. CIT Appeals has decided the Appeal by not condoning the delay in submission of the Appeal and dismissed the Appeal without looking into the merits of the Appeal.”

2. The assessee is an individual engaged in the business of construction. The assessee filed a return of income for AY 2020-21 on 31.03.2021 declaring total income at Rs.3,64,100/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessee during the year under consideration has purchased certain agricultural land along with his brother and the assessee has paid a sum of Rs. 22,50,000/- towards the purchase cost. The Assessing Officer (AO) during the assessment proceedings noticed that the stamp duty value of the property is Rs. 89,30,400/-. The AO in this regard issued a notice calling on the assessee to furnish the relevant details pertaining to the purchase of the property and to explain why the difference cannot be added to the income of the assessee. Since the assessee did not file any details as called for by the AO, the AO made an addition of Rs. 30,40,200/- being 50% of the difference between the stamp duty value and the amount paid by the assessee towards purchase under section 56(2)(x) of the Income Tax, 1961 (the Act). Aggrieved the assessee filed further appeal before the CIT(A). There was a delay of 117 days in filing the appeal before the CIT(A). The CIT(A) issued various notices calling on the assessee to furnish the details pertaining to the impugned issue and also to submit

the reason for delay in filing the appeal before him. The assessee submitted before the CIT(A) that the assessee's father in law expired on 05.11.2022 and since the family was under mental stress the appeal could not be filed in time. The assessee accordingly prayed for condoning the delay in filing the appeal. The CIT(A) did not accept the submissions of the assessee stating that the death of father in law happened 66 days after the receipt of the order and therefore the reason quoted by the assessee for the delay is not sufficient cause for condonation of delay. Accordingly, the CIT(A) dismissed the appeal without condoning the delay. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. We heard the parties and perused the material on record. The AO during the course of hearing noticed that there is a difference between the stamp duty value and the actual amount paid by the assessee towards purchase of agricultural land during the year under consideration. Since the assessee did not file the relevant details as called for by the AO except the sale-deed, the AO proceeded to make addition under section 56(2)(x) of the Act towards 50% of the difference. The CIT(A) dismissed the appeal without condoning the delay of 117 days in filing the appeal before him and accordingly did not consider the issue on merits. The reason as submitted by the assessee before the CIT(A) for delay in filing the appeal is that the father in law of the assessee passed away and the family was under mental stress. The CIT(A) rejected the said reason stating that the father in law passed away much later before which the assessee had sufficient time to file the appeal before the CIT(A). However, in our considered view the reasons given by the assessee being death of family member resulting in mental stress to entire the family is a reasonable cause. The Madras High Court in the case of CIT v. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) held that no hard and fast rule can be laid down in the matter of condonation of delay and the Court should adopt a

pragmatic approach and the Court should exercise their discretion on the facts of each case keeping in mind that in construing the expression “sufficient cause” the principle of advancing substantial justice is of prime importance and the expression “sufficient cause” should receive a liberal construction. In view of these discussions and considering the facts peculiar to the assessee's case, we are inclined to direct the CIT(A) to condone the delay in filing the appeal before him and adjudicate the impugned issue on merits by calling for the relevant details as may be required. The assessee is directed to file the details and co-operate with the appellate proceeding by not seeking adjournments without sufficient reasons. It is ordered accordingly.

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

Order pronounced in the open court on 25-11-2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)

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