

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'SMC' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 2171/KOL/2024  
Assessment Year: 2013-2014**

***Jiban Lal Shaw,.....Appellant***  
***34, Deshpran Sashmal Road,***  
***Tollygunge Phari,***  
***Kolkata-700033***  
***[PAN:FQZPS9800N]***  
***-Vs.-***

***Income Tax Officer,.....Respondent***  
***Ward-28(1), Kolkata,***  
***2, Gariahat Road, Kolkata-700033***

**Appearances by:**

*Shri Sutosom Bhattcharyya, Advocate, appeared on behalf  
of the assessee*

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf  
of the Revenue*

**Date of concluding the hearing: December 12, 2024**  
**Date of pronouncing the order: December 12, 2024**

**ORDER**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 14<sup>th</sup> June, 2023 passed for Assessment Year 2013-14.

2. Brief facts of the case are that the assessee is an individual, who is engaged in the business of running a small cold drink shop.

The assessee and his family members have some joint family property and entered into a joint development agreement for construction of a building on the said land. The assessee has received Rs.2,66,677/- as consideration. The assessee has not received any other consideration. However, the ld. Assessing Officer made an addition of Rs.27,61,456/-, which has been added as capital gains of the appellant.

3. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals). After considering the facts and circumstances of the case, the ld. CIT(Appeals) dismissed the assessee's appeal.

4. On being aggrieved, the assessee preferred an appeal before the ITAT with a delay of 437 days and filed condonation petition. It was the submission of the assessee that the assessee and his wife are suffering from Kidney problem and they admitted in a Hospital for Dialysis. Due to ill health of the assessee and his wife, they are unable to prefer an appeal before the Tribunal and they were also unaware of the order passed by the ld. CIT(Appeals). The ld. CIT(Appeals) passed an *ex-parte* order without giving any opportunity to them. The assessee therefore, pleaded to condone the delay and remit the matter back to the file of ld. CIT(Appeals).

5. On the other hand, ld. D.R. submitted that there is a huge delay and contended that the assessee has not given proper explanation therefore, condonation petition may be dismissed.

6. I have heard both the sides and perused the material available on record as well as condonation petition. The Id. Counsel for the assessee brought to my notice that the assessee was suffering from severe Kidney problem and the assessee and his wife are under Dialysis and he also filed the Medical Certificate. I have perused the medical certificate. Upon perusal of the medical certificate, the assessee and his wife were admitted in the hospital for Dialysis. Therefore, considering the facts and circumstances of the case, I am of the view that the assessee was prevented to file appeal with sufficient cause. There is a sufficient cause to condone the delay. Accordingly, the delay is condoned.

7. So far as the merits of the case is concerned, before the Id. CIT(Appeals) the assessee has not furnished any written submission or evidence to establish his case and pleaded for one more opportunity. Considering the health condition of the assessee, I am inclined to set aside the order passed by the Id. CIT(Appeals) in order to meet the principle of natural justice, and remit the matter back to the file of Id. CIT(Appeals) with a direction to provide one more opportunity of being heard to the assessee. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the Ld. CIT(Appeals) failing which the Ld. CIT(Appeals) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials available on the record. Thus, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 12/12/2024.

Sd/-

**(Duvvuru RL Reddy)  
Vice-President (KZ)**

**Kolkata, the 12<sup>th</sup> day of December, 2024**

- Copies to :*(1) *Jiban Lal Shaw,*  
*34, Deshpran Sashmal Road,*  
*Tollygunge Phari, Kolkata-700033*
- (2) *Income Tax Officer,*  
*Ward-28(1), Kolkata,*  
*2, Gariahat Road, Kolkata-700033*
- (3) *CIT(Appeal), NFAC, Delhi;*
- (4) *CIT - , Kolkata;*
- (5) *The Departmental Representative;*  
(6) *Guard File*

TRUE COPY

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**