

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

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

**I.T.A. No.4279/Mum/2024
(Assessment Year: 2011-12)**

F A Builders, Sonawal Apartment, B Wing, Flat No. 203, Mt Ansari Marg, Mumbai-400008. PAN : AABFF9064G	Vs.	ITO-17(1)(4), Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Asadali Z Mazgaonwala, AR

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

Date of Hearing : 09.10.2024

Date of Pronouncement : 05.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-1, Jaipur [in short 'the CIT(A)'] dated 24.06.2024 for Assessment Year (AY) 2011-12. The assessee raised the following grounds of appeal:

“The appellant assessee objects to the appellate order passed by the learned CIT [Appeals] on following grounds of appeal, which are raised without prejudice to each other:

1. Notice under Section 148 was issued on March 29, 2018 whereas, the Firm stood dissolved on May 10, 2017. Thus, the said Notice was issued to a

Non Existing Person and therefore, the said Notice is bad in law and void ab-initio.

2. Without prejudice to the above and in furtherance of the aforesaid ground, the Hon'ble CIT Appeal did not appreciate and has failed to condone the delay in filing of the Appeal even after the Appellate filed an Affidavit by CA Ms. Komail Merchant, wherein, the said Chartered Accountant had accepted complete responsibility for the delay in filing of Appeal due to her personal medical reasons beyond the control.

3. Without prejudice to the aforesaid ground of Appeal and as and by way of the alternate Ground of Appeal, it is submitted that the impugned Sale Deeds were executed on 1/4/2010 and 27/10/2010. The details of the same had been recorded in the Books of Accounts for the Assessment Year 2011-2012 and has also been offered for tax. The Hon'ble CIT by not condoning the delay has miserably failed to adjudicate the issue on merits that the three transactions in question relating to Flat No.601, Flat No.501 and Flat No.202 were sold in the Financial Year 2010-2011 relating to Assessment Year 2012-2013 and the details of the said sale has been recorded in the Books of Accounts for the Assessment Year 2011-2012 and has also been offered for tax.

4. That the said Order is passed on June 24, 2024 and therefore, the present Appeal is filed in time without any delay.

5. The appellant assessee has paid the prescribed appeal fees of Rs. 10,000.00 on 21st August 2024 and the receipt is enclosed.”

2. The assessee did not file the return of income for the year under consideration. The Assessing Officer (AO) from the details available in Individual Transaction Statements (ITS) maintained under module of AST system notice that the assessee has sold immovable property for a value of Rs. 1,31,60,000/-. The AO called on the assessee to furnish the return of income and the assessee filed the return of income on 16.10.2018 in response to notice under section 148 of the Income Tax Act, 1961 (the Act). The AO called on the assessee to furnish details pertaining to the transaction of immovable property. Since the assessee did not respond to the notices, the AO completed the assessment under section 144 r.w.s.

147 of the Act in which he made the addition of Rs. 1,31,60,000/-. Aggrieved the assessee filed further appeal before the CIT(A). There was a delay of nine months in filing the appeal before the CIT(A). The assessee made the following submission before the CIT(A) with respect to the condonation of delay.

“That I Mr. Islam Qureshi aged 62 years, am the partner of M/s F. A Builders and I am authorized to file the petition for condonation of delay.

That I, the above named petitioner, am well conversant with the facts stated below. That the income tax assessment for the assessment year 2011-12 of M/s F.A. Builders has been completed by ITO 17(1)(4) Mumbai by order dated 20/12/2008. That the time for filing of the appeal before the CIT (Appeals) was to expire on 19/01/2019. Our Firm M/s F.A. Builders has already been dissolved on 10th May 2017 and all the notices were handled by our Chartered Accountant Ms. Komail Merchant. That the CA was not able to attend this case due to two deaths in her family and that the timelines of the tax office procedure for filing appeal with Your Honour were not known to the partners of the Firm and we purely relied on our C.A. for representing us and therefore appeal could not be filed well within the stipulated time. We are enclosing herewith the affidavit our CA Ms. Komail Merchant which states the circumstances for which she was unable to file the appeals within time. It is noteworthy to mention that in the said affidavit she has clearly stated that her mental disturbance is responsible for the non-compliance and that the client i.e. M/s F.A. Builder is unaware of the fact that the compliance and procedure required is not being followed.

In view of the above, I sincerely request your honour to condone the delay.”

3. The CIT(A) held that there was no sufficient cause for condonation of delay and accordingly dismissed the appeal.

4. We heard the parties and perused the material on record. We notice that the CIT(A) did not consider the appeal on merits and has dismissed the appeal without condoning the delay in filing the appeal before him. From the perusal of the submissions made by the assessee before the CIT(A) with regard to condonation of delay as extracted herein above we notice that the assessee has filed an affidavit

from the Chartered Accountant (CA) mentioning the circumstances due to which she was unable to file the appeal on time. The reasons as stated by the assessee in the petition for condonation of delay in our considered view is a reasonable cause for delay in filing the appeal before the CIT(A). Therefore, in the interest of natural justice and fair play, we remit the appeal back to the CIT(A) with a direction to condone the delay in filing the appeal before him. The CIT(A) is further directed to call for the necessary details as may be required and decide the case on merits in accordance with law. The assessee is directed to file the details as may be called for by the CIT(A) and co-operate with the appellate proceedings. 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 05-11-2024.

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