

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE Shri Rahul Chudhary (Judicial Member) &
Shri Omkareshwar Chidara (Accountant Member)

ITA No. 5977/MUM/2024
Assessment Year: 2011-12

Punam Vishnuraj Motwani
B/202, Lodha Imperia, LBS
Marg, Bhandup
Mumbai - 400078.

ITO 27(2)(5),
ITO 27(2)(5), Tower No. 6
Vs. Vashi Railway Station
Commercial Complex Vashi
Navi Mumbai - 400703.

PAN NO. ANZPM9140D
Appellant

Respondent

Assessee by : Shri Venugopa C. Nair
Revenue by : Shri Mahesh Pamnani, Sr. DR

Date of Hearing : 02/01/2025
Date of pronouncement : 27/01/2025

ORDER

PER OMKARESHWAR CHIDARA, AM

This appeal by the assessee is directed against order dated 18/09/2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12.

2. In the above captioned appeal, the appellant has filed an appeal for A.Y. 2011-12 with the following Grounds of Appeal :

“1. The Learned CIT (A) erred in facts and circumstances and in law in confirming Penalty that AO had levied u/s 271F, by refusing to



condone a delay which itself was non-existent, when computed from service of notices.

2. *The Learned CIT (A) erred in facts and circumstances and in law in confirming Penalty that AO had levied u/s 271F when the appellant was not statutorily obliged to file return of income.*

3. *The Learned CIT (A) erred in facts and circumstances and in law in confirming Penalty that AO had levied u/s 271F when the appellant had not been served with any notice as the residence to which notices were served had been sold, precisely on receipt of information of which the assessment was framed.*

The Appellant craves leave to amend, alter, modify or omit any of the aforesaid grounds of Appeal as occasion may arise or demand.”

3. The AR of appellant has submitted that the appellant is a senior citizen and she doesn't know the intricacies of Income Tax Act. She has never filed Return of Income nor she had registered with Income Tax portal. She sold an old immovable property and invested the entire sale consideration by acquiring another immovable property. The claim of Ld. AR of the appellant is that there is no tax liability and hence there is no need to file return of income. It was submitted that the entire capital gains was invested in acquiring other property and hence capital gain tax is not leviable as the capital gain income is below taxable limit. Ld. AR of the appellant has also given a calculation sheet to show that the income of the appellant is below taxable limit and hence there is no need to file return of income. It was also pleaded that the main appeal relating to levy of capital gain tax is under appeal and same is pending with Ld. CIT(A). Hence, it was requested that the penalty levied by the Ld. AO may be set aside. Alternatively, it was



requested that one more opportunity may be given to her to substantiate her case before Ld. CIT(A).

4. Per contra, Ld. DR has relied on the orders of the lower authorities and submitted that the penalty levied by the Ld. AO should be sustained.

5. Rival submissions are heard and it is decided to give one more opportunity to the appellant for the following reasons :-

a) The appellant is a senior citizen and her bonafides for not filing the return of income was not doubt because notices sent by the Department were not received by her due to change of address.

b) The main appeal which deals with Capital Gains is still pending with Ld. CIT(A) for adjudication and thus penalty appeal may have some bearing on the main appeal in the sense, if it is held that there is no taxable income, then appellant would have better chance to substantiate her case.

6. Accordingly, the appellant is directed to co-operate with Department for the disposal of main appeal and this penalty appeal.

7. As it is held that the appellant would be given one more chance, the case is remitted to Ld. CIT(A) and the Ld. CIT(A) is directed to dispose of the main appeal of leviability of Capital Gains and then decide this penalty appeal.



8. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 27/01/2025.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai;

Dated: 27/01/2025

PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai