

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'SMC' AGRA**

(Through Physical/Virtual Hearing)

**BEFORE SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.77/Agr/2025
[Assessment Year: 2012-13]**

Rajveer Singh, 3K Athaipura Mehrauni Lalitpur, Uttar Pradesh-284405	Vs	Income Tax Officer, Ward-2(3)(4), Lalitpur, Income Tax Bhawan, Civil Line, Lalitpur, Uttar Pradesh-284403
PAN-MCBPS1576G		
Appellant		Respondent

Appellant by	None
Respondent by	Shri Shailender Srivastava, Sr. DR

Date of Hearing	03.04.2025
Date of Pronouncement	03.04.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal filed by the assessee is directed against the order dated 24.01.2025 of National Faceless Appeal Centre, Delhi/Ld. CIT(A), relating to Assessment 2012-13 arising out of order u/s 147 r.w.s 144 of the Income Tax Act, 1961 (hereinafter referred to 'the Act') dated 25.11.2019 passed by the Income Tax Officer, Ward-2(3)(4), Lalitpur.

2. None appeared on behalf of the assessee. However, the appeal is being decided after hearing the ld. Sr. DR and on the basis of materials available on record.

3. Brief facts of the case: The Assessing Officer in this case had information that the assessee had sold immovable property for a sale

consideration of Rs.1,60,000/- whereas the market value u/s 50C of the Act of the said property amounted to Rs.21,60,000/- during the year under consideration. It was also noted by the Assessing Officer that the assessee had not filed his return of income for the relevant assessment year and had not shown Long Term Capital Gains on the sale of this immovable property. Further, no response was received to the notice u/s 133(6) of the Act dated 11.03.2019 issued by the Assessing Officer to verify this transaction. Thereafter, the Assessing Officer issued a notice u/s 148 of the Act dated 30.03.2019. The assessee did not file any return of income in response to the said notice and also did not appear during the assessment proceedings. The Assessing Officer issued a detailed show-cause notice u/s 144/142(1) of the Act to explain the above transaction and to explain that in absence of any explanation why the full value of the transaction shall not be deemed to Rs.21,60,000/-. The assessee failed to comply with the said notice and the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act at the total income of Rs.21,60,000/- as Long Term Capital Gains.

4. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). The ld. CIT(A) dismissed the appeal of the assessee *in limine* under the provisions of 249(3) r.w.s. 250 of the Act by not condoning the delay of 42 days in filing of the appeal before the Ld. CIT(A).

5. Aggrieved with the said order, the assessee is in appeal before us.

6. We have heard the ld. DR and perused the material available on record. The assessee had made an application for condonation of delay on 14.02.2020 before the ld. CIT(A), which is reproduced as under:-

"The appellant is a illiterate daily wages worker who use to work with different contractors at the rate of Rs.200/- per day. The appellant is not keeping well and is of unsound mind with hearing disabilities. The appellant was served with a notice u/s 148 of the Income tax act, 19 61 which was not complied with. The appellant was then served with notices u/s 142(1) which were duly replied by the appellant on advice of his family and friends through an advocate who is practicing in civil courts. He thought that the entire chapter was closed and did not approached to the Income tax department to know about the outcome of the case. In the mean time the Ld. AO, Ward-2(3)(4). Lalitpur passed an order dated 25/11/20219 which was served to the appellant on 02/12/2019. As per the date of receiving the appeal was suppose to be filed on or before 02/01/2020 but due to illiteracy he could not understand the consequences of the order passed by the AO. When he receive d a notice of demand he approached another advocate who recommended him to file an appeal against the order. This process took the time of two months as a result there was a delay of around 42 days. Being person of unsound mind and with disabilities the appellant would mo st humbly like to plead that your honour take a considerate view and condone the delay in filing of appeal."

7. The explanation filed by the assessee before the Ld. CIT(A) for the delay in filing of the appeal by 42 days is found to be reasonable and justified. Therefore, the decision of the Ld. CIT(A) in not considering the same and not condoning the delay is not justified and therefore, the same is set-aside. We condone the delay of 42 days before the ld. CIT(A). Further, the assessee in the statement of facts has submitted that the land sold was an agricultural land and it was not a capital asset and therefore, no capital gain would arise on the sale of the said land. This point needs to be examined and the assessee is also required to furnish the supporting evidence in support of his claim that the land sold was an agricultural land. Therefore, in the interest of justice, one more opportunity is given to the assessee to represent his case effectively before the ld. CIT(A). We, therefore, set-aside the order of the ld. CIT(A) and restore the matter to his file to pass an order afresh after giving a reasonable opportunity of being

heard to the assessee. Further, the assessee is also directed to appear before the ld. CIT(A) during the appellate proceedings. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 3rd April, 2025.

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Dated 03.04.2025.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi,