

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM**

**ITA No. 1161/Coch/2024
Assessment Year: 2013-14**

Beneesh Kumar Appellant
Madathuparambu House, Thattzham Road
Vaduthala, Kochi 682023
[PAN: AGIPB7548Q]

vs.

The Income Tax Officer Respondent
Non-corporate Ward, Kochi

Appellant by: Shri Ramesh Cherian, Advocate
Respondent by: Shri Omanakutan, Sr. D.R.

Date of Hearing: 19.03.2025
Date of Pronouncement: 29.04.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)], dated 12.05.2024 for Assessment Year (AY) 2013-14.

2. Brief facts of the case are that the appellant is an individual deriving income under the heads 'income from house property', 'income from business, and 'capital gains'. The return of income for AY 2013-14 was filed on 02.12.2013 declaring total income of Rs.

2, 13,150/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1(1), NC, Kochi (hereinafter called "the AO") vide order dated 25.02.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act). While doing so, the AO disallowed the claim for deduction u/s. 54 of the Act.

3. The factual background leading to the above addition is that during the previous year relevant to assessment year under consideration the appellant had sold immovable property for a consideration of Rs. 62,31,820/- which was purchased on 12.03.2004 for a consideration of Rs. 1,62,000/-. The appellant returned capital gains of Rs. 57,28,310/- and claimed deduction u/s. 54F of the Act of Rs. 56,85,837/-. Thus, returning net capital gains of Rs. 42,473/-. The AO had reworked out the capital gains at Rs. 57,46,710/- as against the long term capital gains returned by the appellant of Rs. 57,28,310/-, however denied the claim of deduction u/s. 54F as the appellant had allegedly failed to adduce proof in support of the claim made.

4. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order dismissed the appeal for non-prosecution.

5. Being aggrieved, the appellant is in appeal before us in the present appeal.

6. At the outset we found that the present appeal is filed with a delay of 141 days. The appellant had filed a petition for condonation

of delay on the ground that the appellant is working as a Salesman and travelling in connection with his work. Therefore, the appellant was not well versed with the computer applications. Therefore he could not keep track of the emails on regular basis. It is only after the appellant received a call from the Income Tax Department in the month of December, 2024, he came to know about the order passed by the CIT(A). Immediately he took steps to file the appeal against the order passed u/s. 250 of the Act. Thus, it is submitted that the delay had occurred due to the reasons that are beyond his control. Therefore, he prayed for condonation of delay. In the absence of any material contrary to the averments made in the affidavit, we are of the considered opinion that it is a fit case to condone the delay and admit the appeal for adjudication on merits.

7. We have heard the rival contentions and perused the material available on record. At the outset we found that the learned CIT(A) had dismissed the appeal for non-prosecution without entering into the merits of the addition. We found from para 1 of the order of the CIT(A) that hearing notice was issued through ITBA portal and email. In this connection the Hon'ble Punjab & Haryana High Court in the case of *Munjal BCU Centre of Innovation and Entrepreneurship Vs. CIT (Exemptions) (2024) 463 ITR 560 (P&H)*, wherein the Hon'ble High Court after making reference to provisions of 282(1), held that service of notice through ITBA portal is not valid service and remanded the matter to AO for denovo

disposal of case. The relevant paragraphs of the judgment are reproduced below :

“7. We are afraid that we cannot subscribe to the submissions as advanced by the learned counsel for the Revenue-respondent. The provisions of section 282(1) of the Act of 1961 and rule 127(1) of the Income-tax Rules, 1962 provides for a method and manner of service of notice and orders which read as follows :

.....
.....

8. In view of the above, it is essential that before any action is taken, communication of the notice must be done in terms of the provisions as enumerated hereinabove. The provisions do not mention communication to be “presumed” by placing notice on the e-portal. A pragmatic view has to be adopted always in these circumstances. An individual or a company is not expected to keep the e-portal of the Department open all the time so as to have knowledge of what the Department is supposed to be doing with regard to the submissions of forms etc. The principles of natural justice are inherent in the income-tax provisions and the same are required to be necessarily followed.

9. Having noticed as above, this court is of the firm view that the petitioner has not been given sufficient opportunity to put up its plea with regard to the proceedings under section 12A(1)(ac)(iii) of the Act of 1961 and as it was not served with any notice. Therefore, he would be entitled to file his reply and the Department would of course be entitled to examine the same and pass a fresh order thereafter.

10. In view of the above, the writ petition is allowed and the order dated January 16, 2023 (annexure P-5) is quashed and set-aside. The Department would provide an opportunity of

hearing to the petitioner and they will also allow the petitioner to appear personally for the purpose and pass a speaking order independent of the order passed earlier by them on January 16,2023. The same shall be done expeditiously provided the petitioner file his reply within a period of three weeks.”

8. In view of this, we are of the considered opinion that since there is no valid service of hearing notice by the CIT(A), the matter requires remand to the CIT(A) for de novo disposal in accordance with law after affording reasonable opportunity of hearing to the appellant.

9. In the result, appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 29th April, 2025.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 29th April, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
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Assistant Registrar
ITAT, Cochin