

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH, 'DB': DEHRADUN**

(Through Virtual hearing)

**BEFORE SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.80/DDN/2024**

**Assessment Year: 2014-15**

Irshad Ilahi, 96 Colli Camp, Turner Road, Clement town, Dehradun, Uttarkhand-248001	Vs	Income Tax Officer, Ward-1(3), Dehradun
<b>PAN-ACMPI0814J</b>		
Appellant		Respondent

Appellant by	Shri Rajiv Sahni, CA
Respondent by	Shri A.S. Rana, Sr. DR

<b>Date of Hearing</b>	<b>17.04.2025</b>
<b>Date of Pronouncement</b>	<b>09.07.2025</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi/ld. Commissioner of Income Tax (Appeals), dated 03.04.2024 pertaining to Assessment Year 2014-15 arising out of assessment order u/s 144/143(3) of the Income Tax Act, 1961(hereinafter referred as 'the Act'), dated 22.12.2017.

2. Brief facts of the case:- The assessment in this case was reopened u/s 147 of the Act vide notice dated 18.10.2016. In response to the said notice, the assessee filed a return of income on 13.07.2017 declaring total income of Rs.2,99,580/-. The AO has given a list of dates in para no.2 on page-2 of the assessment order, where, out of nine occasions, there was no compliance on eight occasions and one occasion only adjournment was filed. Thereafter, the AO

issued show-cause notices to the assessee as detailed in the assessment order, wherein, Long Term Capital Gains on sale of a property was proposed to be taxed. The AO in absence of any compliance from the assessee and after making certain local enquiries added a sum of Rs.90,94,999/- as net capital gain as per computation of capital gains on page-9 of the assessment order.

3. Aggrieved with the said order, the assessee preferred appeal before the Id. CIT(A). The Ld. CIT(A) in a very brief order, did not condone the delay in filing of the appeal and also dismissed the appeal of the assessee on the ground that no supporting documentary evidence was filed in support of the assessee's claim that she was liable to only 1/6th of the Long Term Capital Gains arising on the sale of the said property.

4. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us on the following grounds of appeal and further additional grounds of appeal, which are reproduced as under:-

“1. That in any case and in any view of the matter, the learned CIT(A), NFAC has erred in law and on facts in confirming the action of the Learned AO by dismissing the Appeal without giving any notice under section 250 of the Income Tax Act 1961.

2. That in any case and in any view of the matter, the Learned CIT(A), NFAC has erred in law and on facts in passing a non speaking order in respect of submission made to the CIT(A) when physical appeals were being heard by the Jurisdictional CIT(A).

3. That in any case and any view of the matter, the Learned CIT(A), NFAC has erred in law and on facts in not correctly computing the income of the Appellant under the head "Income from Capital Gains".

4. That in any case and in any view of the matter, the CIT(A) NFAC did not give any opportunity by issue of Notices u/s 250 before

adjudicating the Appeal thereby not following the principles of natural justice.”

#### Additional ground

1. The Appellant inherited an immovable property from her late husband, Shri Inayatullah who died intestate, which she later sold on 27.8.2013 for herself and children from her lineage.
2. The Appellant is a Muslim governed by The Muslim Personal Law (Shariat) Application Act, 1937. The chart showing respective share in the said immovable property as per the provisions of the above law in the hands of the Appellant and her family and also in the hands of the family/children of Wife B of Late Shri Inayatullah is annexed per Annexure 3 to this submission for your ready reference, perusal and records.
3. Children of Wife B, namely Shri Suhail Siddiqui, Shri Javed Inayat and Smt. Ruby filed a suit no.272 in 2009 before the Additional District and Sessions Judge-V, Dehradun titled Smt. Ruby vs Smt. Irshad Illahi for claim of their share in the properties left behind by Late Shri Inayatullah, the late husband of the Appellant. Copy of the same is annexed per Annexure 4 to this submission for your ready reference, perusal and records.
4. The late husband of the Appellant, Late Shri Inayatullah inherited the property vide a family decree passed by the Senior Civil Judge(Third), Dehradun on 18.11.1987, wherein his share was held at 25/155 of the total value of family assets of Rs.4,59,655 valued by the a Commissioner appointed by the Court on 28.1.1981. The share of the late husband came to Rs.74,137.90 as per the Valuation Report of the Court Commissioner. Further the decree of Rs.4,50,000 has been passed by the Hon'ble Judge. Copy of the said decree and also the valuation report of the Court Commissioner is annexed per Annexure 5 to this submission for your ready reference, perusal and records.
5. In view of the above, the income of the Appellant from the sale of the immovable property on 27.8.2013 is recomputed and placed per Annexure 6 to this submission for your ready reference, perusal and records.
6. The Learned AO erred in taking the cost of acquisition as on 1.4.1981 as per the Circle Rate for the Years 1980-1983, whereas the value of the said land and building as per the Report of the Court Commissioner on 28.1.1981 has been valued at Rs.74,138, which has been accepted by the Hon'ble Court in passing the decree on 18.11.1987, which has been taken as the 'Cost of Acquisition' as on 1.4.1981(far more proximate to 28.1.1981 rather than the Circle Rate

of Years 1980-1983), in making the Computation of Capital Gains annexed per Annexure 6 supra.

7. The Appellant and the other 5 co-owners paid a sum of Rs.25,00,000 vide a settlement entered into with the children of Wife B, who had filed for share in immovable property sold by the Appellant vide a suit no.272 of 2009. Copy of the Settlement of claim arising out of the suit. Copy of the said Settlement Order dated 28.5.2014 is annexed per Annexure 5 above.”

5. During the hearing before us, the assessee inter-alia in her written submission submitted as under:-

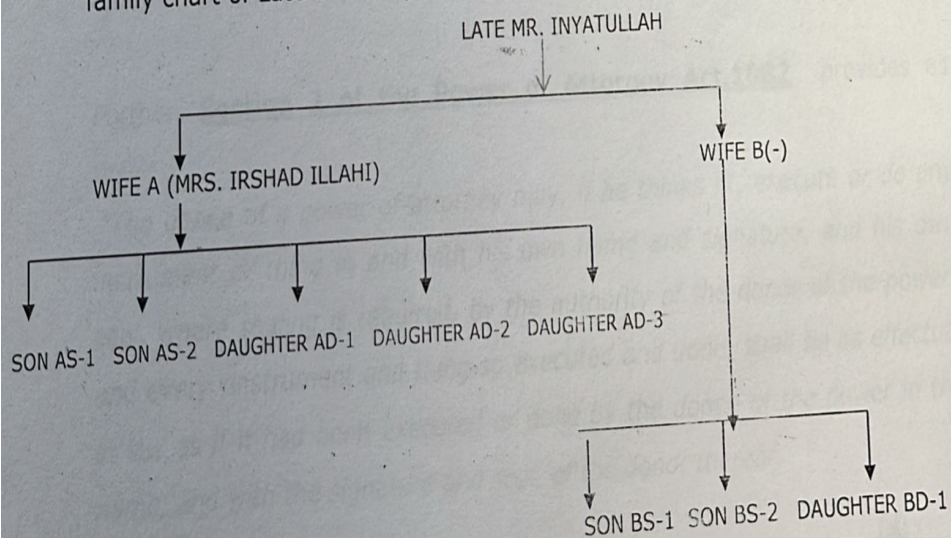
Hon'ble Sir,

The above Appeal is fixed for hearing today.

The submissions in this case are being submitted as under:-

**GROUND OF APPEAL NO.1 AND ADDITIONAL GROUND OF APPEAL NO.2**

1. The Appellant is a widow of Late Shri Inayatullah who died on 3.7.2008 leaving behind his two wives and 5 children from his Wife 1(identified as "A") and 3 children from his Wife 2(identified as "B").
2. The Appellant(Wife A) inherited(intestate) along with other claimants an immovable property titled as 43/2 Gandhi Road, Dehradun from her late husband and sold the same on behalf of herself and her 5 children. The family chart of Late Shri Inayatullah is being submitted as under:-



3. The Appellant was given a Power of Attorney, a copy of which is annexed per **Annexure 1** to this submission for your ready reference, perusal and records, by the other 5 co-owners(AS-1,AS-2,AD-1,AD-2 and AD-3) of the property received by them in inheritance on death of Shri Innayatullah along with other claimants.
4. The Appellant executed a Sale Deed for Rs.90,00,000 for herself and also as a power agent on behalf of the 5 other co-owners(AS-1,AS-2,AD-1,AD-2,AD-3), whereas the value as per Section 50C of the Income Tax Act,1961 as on the date of registration of the sale deed was Rs.93,86,418.
5. The Learned AO vide his Assessment Order dated 22.12.2017 assessed the total income arising out of transfer of the capital asset as " Capital Gains" in the hands of the Appellant whereas the Appellant was only one of the co-owners and acted as a "power agent" of the other 5 co-owners(AS-1,AS-2,AD-1,AD-2,AD-3). Copy of the Assessment Order dated 22.12.2017 is placed per **Annexure 2** to this submission for your ready reference,perusal and records.

6. The Id. AR further submitted that since vital facts have now been placed before the Tribunal, which were also placed before the Ld. CIT(A) but not considered by the Id. CIT(A) requested that the delay in filing appeal before the Ld. CIT(A) may be condoned and his order may set-aside the matter may be restored to the file of the AO for considering the new submissions/evidences and decide the matter afresh. The assessee filed a written submission explaining the reasons of delay as under:-

*"1. That the Appellant is a semi literate Muslim Lady who was 67 years at the time of the passing of the Assessment Order in December 2017.*

2. That an adverse Assessment Order was passed on 27.12.2017 by the Learned AO.

3. That the Appellant approached a Tax Consultant to file an appeal before the First Appellate Authority i.e. the CIT(Appeals) against the adverse Assessment Order in January 2018.

4. That the Chartered Accountant prepared the Appeal in Form 35 but could not furnish the Appeal since the Rule 45 of the Income Tax Rules, 1962 required the filing of the Form 35 electronically by use of OTP received on the phone number registered on the Aadhar Card.

5. That the Appellant also paid the Appeal Fees of Rs. 1000 in terms of Section 249(1)(iii) on 24.1.2018 (i.e. within 30 days of service of Notice of Demand) but since her Mobile Number was not linked to the Aadhar Card, electronic furnishing of the Form 35 could not be made within the time allowed under Section 249(2)(b) of the Income Tax Act, 1961. Copy of the Challan Status Sheet as downloaded from the Tax Information Network(TIN) of Income Tax Department is annexed per PB 9 to this submission for your ready reference, perusal and records.

6. That the Appellant applied for linking of the Mobile Phone with the Aadhar Card Sewa Kendra and it took more than 2 months for the same to be updated by UIADI since the finger prints of the Appellant could not be validated at the Aadhaar Sewa Kendra.

7. That as a result the Form 35 was furnished only on 6.4.2018 and there was a delay of 72 days beyond the time limit prescribed under Section 249(2) of the Income Tax Act, 1961.

8. That the delayed filing of the Appeal was not deliberate, or on account of culpable negligence or on account of mala fide intention.”

7. The Id. Sr. DR relied upon the orders of the authorities below but did not have any serious objection in the matter getting set-aside to the file of the AO for fresh adjudication.

8. We have heard both the parties and perused the material available on record. On perusal of the assessment order, it is seen that the assessment in this case was passed on 22.12.2017 u/s 144/143(3) of the Act. As per the order dated 03.04.2024 of the Ld. CIT(A), it is seen that the appeal was filed on 06.04.2018,

which means that there is a delay of 72 days. The Ld. CIT(A) has not passed a speaking order for not condoning the delay. Considering the explanation of the assessee and in the interest of justice, the delay in filing the appeal before the Ld. CIT(A) is condoned.

8.1. Further, it is seen that there was no representation by the assessee before the AO as well as before the Ld. CIT(A).

8.1. But now, in view of the above facts stated by the assessee and the plea taken in the additional grounds of appeal, it is seen that the entire facts and the submissions made therein require factual verification. Therefore, in the interest of justice, we set-aside the order of the AO and Ld. CIT(A) and restore the matter to the file of the Ld. AO to decide the issue afresh after allowing reasonable opportunity to the assessee to present her case on this issue.

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

Order pronounced in the open court on 9<sup>th</sup> July, 2025.

**Sd/-**

**[VIMAL KUMAR]  
JUDICIAL MEMBER**

Dated: 09.07.2025.

*Shekhar*

**Sd/-**

**[BRAJESH KUMAR SINGH]  
ACCOUNTANT MEMBER**

Copy forwarded to:

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

Asst. Registrar,  
ITAT,  
(Dehradun Circuit Bench, Dehradun)