आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

श्री विजय पाल राव, उपाध्यक्ष एवं श्री मधुसूदन सावडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं /**ITA No.154/Hyd/2021**
(निर्धारण वर्ष/Assessment Year 2007-2008)

Sri Pusa Nanda Kumar, Hyderabad - 500001. PAN ACUPP6100E	vs.	The DCIT, Central Circle-3(1), Hyderabad – 500 004.
(Appellant)		(Respondent)

निर्धारिती द्वारा /Assessee by:	CA P Murali Mohan Rao
राजस्व द्वारा /Revenue by:	MS U Mini Chandran, CIT-DR

सुनवाई की तारीख/Date of hearing:	18.11.2025
घोषणा की तारीख/Pronouncement:	28.11.2025

आदेश/ORDER

PER VIJAY PAL RAO, VICE PRESIDENT :

This appeal by the Assessee is directed against the order dated 31.08.2018 of the learned CIT(A)-11, Hyderabad for the assessment year 2007-2008.

2. At the outset, there is a delay of 868 days in filing the present appeal before the Tribunal. The assessee has filed petition for condonation of delay which is also supported by the affidavit of the assessee. The learned Authorised Representative of the Assessee has submitted that after the impugned order of learned CIT(A), the Chartered Accountant who was representing the assessee advised the assessee and given an opinion not to file further appeal and, therefore, the assessee could not file the appeal immediately after the impugned order. However, thereafter, there was advent of Covid-2019 pandemic outbreak and assessee could not file the appeal due to covid pandemic. The assessee was subsequently advised that the additions made by the Assessing Officer u/sec.50C of the Income Tax Act [in short "the Act"], 1961 in the absence of any incriminating material in the proceedings u/sec.153A of the Act is not sustainable in law. Therefore, the assessee decided to file the present appeal and the delay in filing the appeal is neither wilful nor deliberate as the assessee could not achieve any ulterior purpose of either avoiding tax liability or any other

advantage. The learned Authorised Representative of the Assessee has submitted that the assessee already paid the entire tax on the assessed income. However, when the assessment itself is not valid for want of any incriminating material and the assessment order under consideration was not pending as on the date of search i.e., 21.09.2012, the addition made by the Assessing Officer u/sec.50C of the Act is not sustainable and liable to be deleted. He has submitted that when the assessee has raised various grounds before the learned CIT(A), though the learned CIT(A) deleted one of the additions of Rs.8,33,000/- made u/sec.68 of the Act, however, the addition of Rs.1,50,11,700/- made by the Assessing Officer u/sec.50C has been sustained by the learned CIT(A) which is highly arbitrary and contrary to law. Thus, the learned Authorised Representative of the Assessee has submitted that the delay in filing the appeal is only up-to 15.03.2020 and thereafter, due to covid-2019 pandemic the appeal could not have been filed until the appeal was filed on 16.03.2021. Thus, the learned Authorised Representative of the Assessee has contended that though the total period of

delay is 868 days, however, the actual delay up-to 15.03.2020 is around 500 days. He has further contended that the assessee has objected to the adoption of the deemed full value consideration as the fair market value of the land in question was very less due to defective title of the original land owners who have executed the sale deed in favour of the buyer and assessee was only a consenting party to the sale deed and that too in the capacity of Managing Director of M/s. Pusala Power Projects Pvt. Ltd. The learned Authorised Representative of the Assessee has pointed-out that this land was falling in the water body i.e., full tank and also vested with the Government and, therefore, it carried no value though the stamp duty valuation was determined at Rs.5,67,50,000/-. He has also referred to the sale deed which was found during the course of search and seizure action and the statement of the assessee was recorded u/sec.131 of the Act and submitted that the assessee was forced to admit and surrender the income on account of sale of the land in question, whereas the assessee was only performing his part as a Managing Director of M/s. Pusala Power Projects Pvt.

Ltd., and, therefore, singed the sale deed as a consenting party on behalf of the said company. Thus, the learned Authorised Representative of the Assessee has submitted that the assessee challenged the addition made by the Assessing Officer before the learned CIT(A), but, the learned CIT(A) has confirmed the said addition which is otherwise not sustainable as per law as well as on the basis of the sale deed in question. He has further contended that no addition can be made in the proceedings u/sec.153A of the Act in the absence of any incriminating material. The Assessing Officer has made a reference of sale deed dated 31.03.2007, however, the addition is not based on the said sale deed which clearly shows that the transaction was between the original land owners and the buyer M/s. V.K. Projects Pvt. Ltd., the assessee signed the sale deed as a consenting party. Thus, he has contended that when the entire income on account of short term capital gain itself is wrongly assessed in the hands of the assessee, then, the addition u/sec.50C is absolutely illegal and unsustainable. The Assessing Officer has made the addition which is contrary to the sale deed dated

31.03.2007 itself. Thus, the learned Authorised Representative of the Assessee submitted that if the appeal of the assessee is not admitted for adjudication on merits, it will result gross injustice to the assessee without any real income in the hands of the assessee. Thus, he has contended that when there is no real income in the hands of the assessee, then, the assessment of capital gain as well as the addition made by the Assessing Officer u/sec.50C of the Act is absolutely not tenable and liable to be deleted. In support of his contention, he has relied upon the Judgment of Hon'ble Bombay High Court in the case of **Vijay Vishin Meghani vs., DCIT Circle-23(2), Mumbai [2017] 398 ITR 250 (Bom).** The learned Authorised Representative of the Assessee has further pointed-out that the matter did not rest even at the stage of advice of the Chartered Accountant, but, the assessee also opted for Vivad se Vishwas Scheme to settle the dispute by filing declaration in Form-1 on 25.12.2020. However, the said application was rejected by the Competent Authority due to the reason that prosecution proceedings u/sec.276C(2) were initiated and that assessee was found not

eligible for filing the application under Vivad se Vishwas Scheme 2020. Thus, the learned Authorised Representative of the Assessee has submitted that when the application filed under Vivad se Vishwas Scheme for settlement of the dispute was rejected by the Competent Authority, the assessee was left with no option but to file the present appeal before the Tribunal. He has, thus, submitted that because of these circumstances and particularly, the advice of the Chartered Accountant representing and handling the tax matters, the assessee could not file the appeal within the period of limitation and thereafter, due to Covid-2019 pandemic outbreak, there was a further delay in filing the appeal. He has thus pleaded that the delay in filing the appeal may be condoned and the appeal of the assessee be admitted for adjudication on merits. He has also relied upon Judgment of Hon'ble Supreme Court in the case of **Vidya Shankar Jaiswal vs., ITO [2025] 174 taxmann.com 21 (SC)** and submitted that that the Hon'ble Supreme Court has observed that the Tribunal and High Court ought to have adopted justice

oriented and liberal approach while condoning the delay of 166 days.

3. On the other hand, the learned DR has vehemently opposed to the condonation of delay and submitted that the assessee during the course of search and seizure action and in the statement recorded u/sec.131 of the Act has admitted the income arising from the sale of land in question as short term capital gain and also surrendered the same to tax. Apart from the surrender of income arising from sale of land in question the assessee has also surrendered a sum of Rs.12 crores and also offered both these incomes to tax in the return of income filed in response to notice u/sec.153A of the Act. The learned DR has thus submitted that once the assessee has admitted and surrendered the said income and also offered the same to tax in the return of income, then, the question of incriminating material during the course of search does not arise. Since the assessee has admitted transfer of land in question, therefore, the Assessing Officer has rightly applied the provisions of sec.50C while framing the assessment u/sec.153A of the Act. The learned

Authorised Representative of the Assessee has further submitted that the assessee once accepted this income and offered the same to tax, then, not filing further appeal before the Tribunal can lead to only one conclusion that assessee accepted the impugned order of the learned CIT(A) and decided not to challenge the same. The learned DR has further pointed-out that initially the assessee did not pay the self-assessed tax, but, later on when the prosecution was initiated against the assessee, the assessee has paid the same as well as the tax on the assessed income. Therefore, once the assessee has accepted the transaction and also admitted the income arising from these transactions which were offered to tax in the return of income, the assessee cannot take a different stand at this level. The prosecution was initiated against the assessee because of non-payment of the self-assessed tax and consequently, the application of the assessee under Vivad se Vishwas Scheme was also rejected. Therefore, the assessee himself was responsible for the rejection of the application under Vivad se Vishwas Scheme. The learned DR has pointed-out that the impugned order of

the learned CIT(A) was passed on 31.08.2018 and the limitation to file the appeal expired on 30.10.2018 itself and, therefore, the Covid-2019 pandemic has no role or bearing on the delay in filing the present appeal which was already time barred in the year 2018 itself. Thus, the learned DR has submitted that the appeal of the assessee is not maintainable being barred by limitation and deserves to be dismissed *in limine.*

4. We have considered the rival submissions as well as relevant material on record. The assessee has explained the cause of delay in the affidavit as under :

"AFFIDAVIT

Pusa Nanda Kumar, S/o. Sri Pusa Lakshmaiah, aged about 61 years, R/o. Hyderabad, do hereby sincerely affirm and state on oath as under:

1. *I am the appellant herein and as such I am aware of the facts of the case and competent to depose to the contents of this affidavit.*

2. *I am not aware of the date of receipt of the order of the Id. Commissioner (Appeals) dated 31.08.2018. Hence the date of appellate order is taken as date of receipt of the order. The appeal in the normal circumstances was to be filed on or before*

30.10.2018, however the same is filed on 16.03.2021, with a delay of 868 days.

3. *In my case the Revenue for Ay 2012-13 has filed appeal before the Hon'ble Tribunal. Sri C.Ramachandram, CA who appeared for me before the Commissioner (Appeals) did not suggest any appeal for the asst. year in question. As I do not have knowledge of tax laws I went by the opinion of my counsel/auditor. However, recently, I have changed my counsel to (Sri Ayyadevara Srinivas, Chartered Accountant) who was representing my appeals has given up brief for his personal reasons. The present counsel who is appearing for me has pointed out that the order of the id. Commissioner (Appeals) for the asst. year under consideration is apparently incorrect as there are numerous cases in which the Commissioner (Appeals) have themselves directed AO to obtain valuation report when the Assessee is objecting to the value. My counsel advised that we have a good case on merits and that I can file appeal seeking condonation of delay.*

4. *Accordingly, the present appeal is being filed with delay of 868 days. It is submitted that the delay in filing the appeal is not willful but is on account of the aforesaid reason. It is submitted that I have absolute case on merits and I am sure to succeed. It is submitted that I should not suffer loss on account of the ill-advise of the counsel who appeared for me before the Commissioner (Appeals). It is submitted that the appeal has huge financial implication and I should not be compelled to pay the huge unjustified taxes and interest for no fault of mine.*

   In the above circumstances, it is prayed that the Hon'ble Tribunal my be pleased to condone the delay of 868 days in filing the appeal and admit the same.

Solemnly affirmed and signed
before me on this the *Sd/-Pusa Nanda Kumar*
15 day of March, 2021. *Deponent"*

4.1. In addition to the affidavit, the learned Authorised Representative of the Assessee has explained the cause of delay that his Counsel Sri C. Ramachandram, CA who appeared on behalf of the assessee in the appeals did not advice the assessee to file further appeal for the assessment year under consideration against the impugned order of the learned CIT(A). It is undisputed that the litigants are generally following the advice of the legal experts and particularly, in cases of tax matters when the issues are complex and complicated beyond the understanding of the person of ordinary prudence. Therefore, the advice of the tax expert is very crucial on the matter to take a decision of challenging a particular order of the Tax Authorities. In the case in hand since the assessee admitted and surrendered the income during the course of search and seizure action and also offered to tax in the return of income filed in response to notice u/sec.153A of the Act, the advice given by the Chartered Accountant was his personal opinion and not

without any basis, but, it seems that once the assessee surrendered the income and also offered to tax in the return of income, the Tax Professional was of the opinion that assessee could not succeed in the appeal against the impugned order of the learned CIT(A). It is a matter of undisputed fact that the assessment of short term capital gain by the Assessing Officer is based on the transaction as per the sale deed dated 31.03.2007 as recorded by the Assessing Officer in the assessment order as under :

> *"Addition towards STCG :*
>
> *During the course of assessment proceedings, it was seen from the document no. 5997/07 executed on 31.03.2007 that there was a sale of land admeasuring Ac.5.27 guntas to M/s VK Projects Pvt Ltd., for a sale consideration of Rs.4.5 Crores. However, as seen from the sale deed dt 31.03.2007, the Stamp authority value of the land was Rs.5,67,50,000/-Hence, vide letter dated 12-03-2015, the assessee was asked to explain as to why the sale consideration should not be taken at stamp authority value as per the provisions of section 50C of the IT Act, and calculate income from capital gains. In response, the assessee has stated as under:*
>
> > *"The land of Acres 5.27 guntas sold to M/s V.K. Projects Pvt. Ltd. was situated in the TL (Full Tank Level), Government treated water Body at Durgomcheruvu, Madhapur.*

This was not noticed by me at the time of buying the said land and there were no buyers. I had to sell the property for Rs.4.5 Crores only which is not matchable with the stamp authority value.

Therefore, I request that the Sale consideration to be treated as Rs.4.5 Crores only."

The assessee's reasoning for selling the property at a lower value is not acceptable. As per the provisions of Sec. 50C (2), since the assessee has not been able to substantiate how the value adopted by the stamp valuation authority can be said to exceed the fair market value of the property, the stamp authority value is deemed to be the full value of consideration received as a result of such transfer as per the provisions of Sec. 50C(1). The capital gain is worked out as under :

Sale of land to M/s V K Projects Pvt. Ltd., [Value as per Sec. 50C(1)]	*Rs. 5,67,50,000/-*
Less Cost of acquisition	*Rs. 4,17,38,300/-*
Short Term Capital Gain	*Rs. 1,50,11,700/-*
Less Short Term Capital Gain declared by assessee	*Rs. 32,61,700/-*
Balance Short Term Capital Gain to be added.	*Rs.1,17,50,000/-*

4.2. The sale deed dated 31.03.2007 is a matter of record, however, the transaction of transfer of land vide sale deed dated 31.03.2007 is between 42 vendors/land owners along with one M/s. Pusala Projects Pvt. Ltd., as a consenting

party in favour of M/s. V.K. Projects Pvt. Ltd. In the array of parties as per the sale deed at Sl.No.44 the assessee's status is shown as under :

> *"44. Pusala Power Projects Pvt. Ltd. having its registered office at Premesis No. 1-4-907 & 908, Mushecrabad, Hyderabad, Represented by its Managing Director Sri. P. Nanda Kumar S/o Late P. Laxmaiah, aged about 47 years, Occ: Business, R/o 11.No. 1-7-510/E/3, Gemini Colony, Musheerabad, Hyderabad."*

4.3. Thus, it is clear that assessee was representing M/s. Pusala Power Projects Pvt. Ltd., as a Managing Director and signed the said sale deed on behalf of the said Company. From the contents of entire sale deed, it can be inferred that the land in question was not transferred by the assessee, but, the assessee singed for and on behalf of M/s. Pusala Power Projects Pvt. Ltd., as a Managing Director. Therefore, the documentary evidence regarding the transfer of the land in question does not make-out or reveal that the transaction in question belongs to the assessee. However, the statement of the assessee recorded on 27.12.2012 and 01.03.2013 in pursuance to search and seizure action on 21.09.2012. The assessee admitted the income arising from the transfer of the

land in question and surrendered a sum of Rs.32,61,700/- which was also offered to tax in the return of income filed in response to notice u/sec.153A of the Act. Except the statement of the assessee recorded u/sec.131 in the post-search enquiries, there is no material found or seized during the course of search and seizure action to show any undisclosed income on account of transfer of the said land in the hands of the assessee. The sale deed in question which is the documentary evidence also shows that the transaction was not between the assessee and the buyer, but, assessee has signed the sale deed in the capacity of Managing Director of M/s. Pusala Power Projects Pvt. Ltd., Therefore, the income surrendered by the assessee in the statement and also offered to tax in the return of income cannot be enhanced by the Assessing Officer in the proceedings u/sec.153A of the Act in the absence of any incriminating material for the assessment year under consideration which was not pending as on the date of search. This proposition has attained finality as held by the Hon'ble Supreme Court in the case of Pr. CIT vs., Abhisar Buildwell 254 ITR 212 (SC). Therefore, *prima facie* the

addition made by the Assessing Officer of Rs.1,17,50,000/- u/sec.50C in the proceedings u/sec.153A in the absence of any incriminating material when the assessment was not pending as on the date of search is absolutely against the law and not sustainable. Even otherwise, the addition on the basis of the statement without corroborative evidence is not sustainable and at the most the income cannot be assessed more than the surrender of income in the statement of the assessee. Therefore, the assessee had a *prima facie* good case before the learned CIT(A) on this issue, but, the learned CIT(A) has confirmed the addition made by the Assessing Officer in Para-6.2 as under :

> *"6.2) I have considered the assessment order and the submissions of the assessee. The provisions of section 50C are mandatory and the assessee has not objected the market value adopted either before the Registration authorities or the AO. The explanation/submission made during the appellate proceedings is vague and is not backed by any evidence. In view of the above, it is held that provisions of section 50C are applicable to the facts of the case and the AO has rightly made the addition. This ground is dismissed."*

4.4. The learned CIT(A) has neither considered the real issue involved in the said ground nor has made any efforts to

ascertain the fair market value of the land in question. Once the assessee has objected for adoption of the stamp duty valuation as full value consideration u/sec.50C of the Act, it is mandatory for the Assessing Officer to refer the determination of fair market value to DVO. It is settled proposition of law that while considering the condonation of delay, the Court must take a liberal view so that the matter should be decided on merits and not on the technicalities. When the substantial cause of justice is pitted against technicalities, the Court should prefer the cause of substantial justice. Therefore, there is no quarrel on the point that Court should take a liberal view while construing the sufficient cause and lean in favour of the litigant to condone the delay in filing the appeal instead of deciding the matter on technicalities. In the case in hand, considering the crucial facts emanating from record reveals that the Assessing Officer has made the addition u/sec.50C in the proceedings u/sec.153A of the Act without any incriminating material rather against the documentary evidence in the nature of sale deed revealing the transaction in question was not between the assessee and the

buyer, but, assessee has singed the sale deed in the capacity of the Director of the Company M/s. Pusala Power Projects Pvt. Ltd. Therefore, even if the assessee has surrendered the income and offered the same to tax, in case of completed assessment, not got abated by virtue of search, the addition cannot be made in the absence of any incriminating material. The impugned order was passed on 31.08.2018 and this appeal was filed on 16.03.2021. Therefore, after 15.03.2020, the delay in filing the appeal is covered by the Judgment of Hon'ble Supreme Court *suo motu* Cognizance For Extension of Limitation, In Re (2022) 441 ITR 722 (SC). The Hon'ble Bombay High Court in the case of **Vijay Vishin Meghani vs., DCIT Circle-23(2), Mumbai (supra)**, has observed in Para Nos.13 to 22 as under:

> ***"13.*** *It is in these circumstances that the assessee stated on oath that he acted bona fide under the advice from his Chartered Accountants and there is no negligence nor any deliberate or intentional act on his part.*
>
> ***14.*** *The assessee did not rest here. He supported this application with an affidavit of one Chandrashekhar, son of S.A. Yogeshwar, a practicing Chartered Accountant and Managing Partner of M/s. Rajesh Rajeev & Associates. The affidavit of the said Chandrashekhar confirmed that the assessee indeed was a*

client of this Chartered Accountancy firm from 1997 to 2006. From paragraphs 3 to 6 of the affidavit dated 22-8-2013, filed by this Chartered Accountant, it is confirmed that the advice as aforesaid was given and professionally to the assessee. The assessee acting on the same did not file the appeal but the rectification application. It is that endorsement from the assessee's then Chartered Accountants which, according to the assessee, enabled him to seek condonation of delay. Every single aspect of the matter was highlighted, including the legal principles. The Tribunal, curiously, in its order, unmindful of these legal principles and which enable a liberal view to be taken of the lapse on the part of the litigant like the assessee, proceeded to pass a 20-page order. In that 20 page order, what we find is that there is a reference made to several decisions of the Hon'ble Supreme Court brought to its notice by the assessee's Senior Advocate, the explanations and reasons furnished by the assessee on affidavit and supported by his Chartered Accountants. The Tribunal, then, in para 8 of the order under appeal highlighted the lethargic steps adopted by the Revenue in the instant case. The Tribunal holds that the assessee has simply put the responsibility for the delay on the Revenue. When this kind of averments are made, according to the Tribunal, it is normally expected that the Revenue should verify the compilation/assessment record to find out the veracity of such explanation. It is unfortunate that the Revenue did not care to verify the record to find out the veracity of the submissions. Importantly, the Tribunal finds that the Revenue has not chosen to counter the averments made on affidavit by the assessee and his Chartered Accountant by furnishing any counter affidavit/explanation. The criticism of the Departmental representative's conduct is also to be found in para 8.

15. *Thus, we find that the Tribunal, out of sheer desperation and frustration and agitated by the fact that the Revenue is not opposing the request for condonation of delay, turned its attention towards the assessee's Chartered Accountant. It is unfortunate that thereafter paragraphs after paragraphs are devoted to how a Chartered Accountant ought to conduct himself and while advising litigants in tax matters. How a Chartered Accountant, as a professional, should be aware that legal proceedings should be filed in time and if there are adverse orders, how proper advice should be given. It is very unfortunate that the Tribunal has, apart from seeking to advice professionals, blamed not only individual Chartered Accountants but equally the Institute of Chartered Accountants of India. It is unfortunate that Courts of law or Tribunals, which are the last fact finding authorities in this case, adopted this course.*

16. *In paragraph 11 of the order under appeal, a reference is made to a decision of the Allahabad High Court in the case of Sri Krishna v. CIT [1983] 142 ITR 618. While it is true that statements made on affidavit remaining uncontroverted must not be accepted as true and reliable, it is clear that in the absence of contemporaneous record or any attempt to falsify the statements on oath, the Tribunal has no business to rely on the principle emerging from this decision. In the instant case, the Tribunal found that the Revenue officials, assuming that they are lax, have not opposed the condonation of delay. They have not filed any counter affidavit denying any factual statements made by either the assessee or the Chartered Accountant. They have not denied the fact that there was a rectification application filed and preceding the rectification application indeed some time was consumed in serving the orders of the Department on the assessee. It is not that the rectification application was not disposed of with promptitude*

but after the assessee was compelled to move an application under the Right to Information Act, it is finally on 14-5-2010 that the application came to be disposed of.

17. *In the circumstances and a perusal of the whole order does not indicate that the Tribunal terms the conduct of the assessee to be the sole factor responsible for the delay. The conduct is not termed as negligent, callous and lacking in bona fides either. In para 12 of the order under challenge, we find that the Tribunal holds that the assessee failed to show that there was sufficient cause. How that cause is not sufficient has been explained by the Tribunal in the earlier paragraphs. However, the explanation which the assessee provided was an advise from his Chartered Accountant. That is why the paragraphs are devoted to the conduct of the professional. The advice given is not only termed as wrong/absurd but the assessee is faulted for blindly accepting such an advice. He is termed as an imprudent man and who failed to verify the correctness of the advice given or apply his mind to it. Thus, the behaviour of the assessee, according to the Tribunal, is beyond the comprehension of human conduct and probabilities.*

18. *We do not see how these are relevant principles.*

19. *Way back in the year 1979, in a decision reported in Concord of India Insurance Co. Ltd. v. Smt. Nirmala Devi AIR 1979 SC 1666 , the Hon'ble Supreme Court has held that a legal advice tendered by a professional and the litigant acting upon it one way or the other could be a sufficient cause to seek condonation of delay and coupled with the other circumstances and factors for applying liberal principles and then said delay can be condoned. Eventually, an overall view in the larger interest of justice has to be taken. None should be deprived of an adjudication on merits unless the Court of law or the Tribunal/Appellate Authority finds that the litigant*

has deliberately and intentionally delayed filing of the appeal, that he is careless, negligent and his conduct is lacking in bona fides. These are, therefore, some of the relevant factors. Those factors should therefore necessarily go into an adjudication of the present nature.

20. *In Smt. Nirmala Devi(supra), the Hon'ble Supreme Court held as under:—*

' 5. The Accident Claims Tribunal pronounced its award on September, 15, 1976, after making the necessary computations and deductions. The appeal had to be filed on or before January 19, 1977 but was actually filed 30 days later. Counsel for the petitioner is stated to have made the mistake in the calculation of the period of limitation. He had intimated the parties accordingly with the result that the petitioner was misled into instituting appeal late. The High Court took the view that the lawyer's ignorance about the law was no ground for condonation of delay. Reliance was placed on some decisions of the Punjab High Court and there was reference also to a ruling of the Supreme Court in AIR 1972 SC 749. The conclusion was couched in these words:

> *"The Assistant Divisional Manager of the Company-appellant is not an illiterate or so ignorant person who could not calculate the period of limitation. Such like appeals are filed by such companies daily. The facts of this case clearly show, as observed earlier, that the mistake is not bona fide and the appellant has failed to show sufficient cause to condone the delay."*

6. We are not able to agree with this reasoning. A company relies on its Legal Adviser and the Manager's

expertise is in company management and not in law. There is no particular reason why when a company or other person retains a lawyer to advise it or him on legal affairs reliance should not be placed on such counsel. Of course, if there is gross delay too patent even for layman or if there is incomprehensible indifference the shield of legal opinion may still be vulnerable. The correct legal position has been explained with reference to the Supreme Court decision in a judgment of one of us in AIR 1971 Ker. 211 (at p. 215):

"The law is settled that mistake of counsel may in certain circumstances be taken into account in condoning delay although there is no general proposition that mistake of counsel by itself is always a sufficient ground. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way. The High Court unfortunately never considered the matter from this angle. If it had, it would have seen quite clearly that there was no attempt to avoid the Limitation Act but rather to follow it albeit on a wrong reading of the situation."

"The High Court took the view that Mr. Raizada being an Advocate of 34 years' standing could not possibly make the mistake in view of the clear provisions on the subject of appeals existing under Section 39(1) of the Punjab Courts Act and therefore, his advice to file the appeal before the District Court would not come to the rescue of the appellant under Sec. 5 of the Limitation Act. The Supreme Court upset this approach."

"I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on questions of law by courts are some times wrong. An amount of latitude is expected in such cases for, to err is human and lay men, as litigants are, may legitimately lean on expert counsel in legal as in other departments, without probing the professional competence of the advice. The court must of course, see whether, in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given, must be treated as sufficient cause when an application under Section 5 of the Limitation Act is being considered. The State has not acted improperly in relying on its legal advisers."

7. We have clarified the legal position regarding the propriety and reasonableness of companies and other persons relying upon legal opinion in the matter of computation of limitation since it is a problem which may arise frequently. If Legal Adviser's opinions are to be subjected by company managers to further legal scrutiny of their own, an impossible situation may arise. Indeed Government, a large litigant in this country, may find itself in difficulty. That is the reason why we have chosen to explain at this length the application of Section 5 vis-a vis counsel's mistake.'

The above sums up the approach of a Court rendering justice according to law.

21. *We find from paragraph 13 of the order, but for this relevant factors and tests, everything else has been brought into the adjudication by the Tribunal. The Tribunal though aware of*

these principles but possibly carried away by the fact that the delay of 2984 days is incapable of condonation. That is not how a matter of this nature should be approached. In the process the Tribunal went about blaming the assessee and the professionals and equally the Department. To our mind, therefore, the Tribunal's order does not meet the requirement set out in law. The Tribunal has completely misdirected itself and has taken into account factors, tests and considerations which have no bearing or nexus with the issue at hand. The Tribunal, therefore, has erred in law and on facts in refusing to condone the delay. The explanation placed on affidavit was not contested nor we find that from such explanation can we arrive at the conclusion that the assessee was at fault, he intentionally and deliberately delayed the matter and has no bona fide or reasonable explanation for the delay in filing the proceedings. The position is quite otherwise.

22. *In the light of the above discussion, we allow both the appeals. We condone the delay of 2984 days in filing the appeals but on the condition of payment of costs, quantified totally at Rs.50,000/-. Meaning thereby, Rs.25,000/- plus Rs.25,000/- in both appeals. The costs to be paid in one set to the respondents within a period of eight weeks from today. On proof of payment of costs, the Tribunal shall restore the appeals of the assessee to its file for adjudication and disposal on merits. We clarify that all contentions as far as merits of the claim are kept open. We have not expressed any opinion on the same."*

5. Therefore, the delay caused by the wrong advice of the legal/tax professionals is considered as bonafide and reasonable explanation for the delay in filing the proceedings.

Further, the assessee also tried to settle the dispute under Vivad se Vishwas Scheme by filing the application and declaration in Form-1 in the year 2020 itself, but, the said application was rejected by the Competent Authority due to the reason of prosecution proceedings against the assessee u/sec.276C(2) of the Act. Therefore, the assessee was not resting his case after the impugned order, but, also taking all possible efforts to settle the dispute. Accordingly, in the facts and circumstances of the case and taking a lenient view, we condone the delay of 868 days, subject to cost of Rs.10,000/- [Rs. Ten Thousand Only] to be paid to Prime Minister's National Relief Fund, within a period of one month from the date of this order.

6. The assessee has raised the following grounds in the appeal :

1. *"On the facts and in the circumstances of the case the order of the Id. Commissioner (Appeals) allowing the appeal only in part is erroneous and is unsustainable on facts and in law. The Id. Commissioner (Appeals) ought to have allowed the appeal in entirety.*

2. *The Id. Commissioner (Appeals) erred in upholding addition of Rs.1,17,50,000 as alleged short term capital gains, and also in holding that the provisions of section 50C of the Act are mandatory. The Id. Commissioner (Appeals) failed to appreciate that the Appellant has disputed the value of the property in question and therefore ought to have directed the AO to refer the value of the property to the valuation cell for valuation of fair market value of the property in question.*
3. *The Id. Commissioner (Appeals) erred in upholding the action of the AO in considering the additional income of Rs.12,96,06,030 admitted by the Appellant in his return failing to appreciate that the same was made without knowing the implication and further the said additional income does not correspond to any seized material for making part of the search assessment. (Tax effect- Rs.4,36,79,013)*

For these and other grounds that may be urged, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal."

7. The assessee has raised the following additional ground in the appeal :

"4. The Hon. ITAT is requested to kindly admit the grounds which are taken for the first time before them, as per the ratio laid down by the Hon. Supreme court of India in the case of National Thermal Power Corporation Limited vs. CIT [1998] 229 ITR 383 (SC).

5. The Ld. CIT(A) ought have appreciated the fact that the AO erred in completing the Assessment u/s 143(3) r.w.s 153A without accepting and considering the affidavit filed for withdrawal of declaration made u/s 132(4).

6. The Ld. CIT(A) ought to have taken into acceptance and into consideration of the revised computation of income filed for the assessment year under consideration.

7. The Ld. CIT(A) ought to have appreciated the fact that the declaration of Rs. 12 Crore was made for the Financial Year 2005-06 and the same cannot be taxed during the AY 2007-08.

8. The Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of appeal."

8. At the time of hearing, the learned Authorised Representative of the Assessee has submitted that the learned CIT(A) has not considered the grounds raised by the assessee in the right perspective and correct application of law. Thus, he has submitted in view of the fact that the land in question was falling in the water body and vested with the Government and could not be transferred and, therefore, the fair market value of the said land in the hands of the seller as well as the buyer cannot be considered as taken by the Assessing Officer being stamp duty valuation. Further, he has submitted that another surrender of Rs.12 crores by the assessee in the statement is also not sustainable for the year under consideration as the said transaction does not pertain to the

assessment year under consideration, but, it pertains to the financial year 2007-2008 and if at all, is assessable only in the assessment year 2008-2009. All these facts are required to be considered and verified from the record and, therefore, he has pleaded that the matter may be remanded to the record of the learned CIT(A) for fresh adjudication as per law.

9. On the other hand, the learned DR has submitted that the assessee has raised these additional grounds now before the Tribunal, but, were not raised either before the Assessing Officer or before the learned CIT(A). Therefore, the assessee cannot be allowed an opportunity to raise these new grounds at this stage.

10. We have considered the rival submissions as well as relevant material on record. At the outset, we note that the addition in respect of short term capital gain made by the Assessing Officer u/sec.50C is *prima facie* not sustainable when there is no incriminating material found or seized during the course of search and seizure action and the assessment in question was not pending as on the date of search.

Consequently, the assessee has now raised the legal issue of the assessability of the income in the hands of the assessee in the absence of any incriminating material in the proceedings u/sec.153A of the Act and further claimed that the declaration of income of Rs.12 crores as per the statement of the assessee is also not sustainable for the year under consideration. The learned Authorised Representative of the Assessee has referred to the statement and pointed-out that assessee has clearly stated that this Rs.12 crores was declared and surrendered for the relevant financial year and without considering the fact that transaction does not pertain for the year under consideration, the same cannot be assessed for the year under consideration even if the assessee has wrongly offered the same to tax. We find force in the contention of the assessee that the Assessing Officer should assess the real income in the hands of the assessee and cannot take advantage of any mistake on the part of the assessee. In any case, in the facts and circumstances of the case, all these aspects are required to be properly verified and examined with the corresponding material/documentary evidences and,

therefore, in the facts and circumstances of the case and in the interest of justice, the matter is remanded to the record of the learned CIT(A) for fresh adjudication of the appeal of the assessee, after considering all these facts as well as documentary evidences relevant for the issues raised by the assessee. Needless to say, the assessee be given an appropriate opportunity of hearing, before passing the order.

11. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 28.11.2025.

Sd/-	Sd/-
[MADHUSUDAN SAWDIA]	[VIJAY PAL RAO]
ACCOUNTANT MEMBER	VICE PRESIDENT

Hyderabad, Dated 28th November, 2025
VBP
Copy to :

1.	Sri Pusa Nanda Kumar, Flat No.610, 6th Floor, Babukhan Estate, Basheerbagh, Hyderabad - 500001.
2.	The DCIT, Central Circle-3(1), Aayakar Bhavan, Basheerbagh, Hyderabad – 500 004.
3.	The CIT(A)-11, 6th Floor, Aayakar Bhavan, Hyderabad.
4.	The Pr. CIT-[Central], Hyderabad.
5.	The DR, ITAT, A-Bench, Hyderabad.
6.	Guard file.

BY ORDER,

//True copy//