

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3073/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2005-06)

Shri Balaram Ambu Daki, Kasar Vadavali Waghbill, G.B. Road, THANE (W).	<b>बनाम/</b> v.	ITO Ward - 1(1), Ashar IT Park, 6 <sup>th</sup> floor, Road No. 16Z, Wagle Estate, THANE (W) - 400 604.
स्थायी लेखा सं./PAN : ASMPD 5834F		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Shri Kishor K. Poddar
Revenue by :	Shri Chandrajit Singh(D.R.)

सुनवाई की तारीख / **Date of Hearing** : 10-03-2016

घोषणा की तारीख / **Date of Pronouncement** :

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the assessee, being ITA No. 3073/Mum/2013, is directed against the order dated 17-12-2012 passed by learned Commissioner of Income Tax (Appeals)- II, Thane (hereinafter called "the CIT(A)"), for the assessment year 2005-06, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 26-12-2007 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 144 of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The ground of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") reads as under:-

"1. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) has erred in not accepting the deduction claimed by the appellant u/s 54F of the Income Tax act, 1961, resulting into retention of Rs. 3,87,500/- as LTCG in the hand of the appellant."

3. At the outset, we find that this appeal is filed late with the Tribunal by 24 days by the assessee. The assessee vide letter dated 15<sup>th</sup> April, 2013 has filed along with medical certificate from Dr. D.B. Daki claiming that the appeal with the Tribunal was filed late by 24 days due to the assessee's indisposition and ill-health, as the assessee was suffering from Malaria and Typhoid fever. Thus, the assessee submitted that due to cited reasons he could not file the appeal within the stipulated time as prescribed u/s 253(3) of the Act and the appeal is delayed by 24 days for which prayers were made for condoning the delay of 24 days in filing the afore-said appeal with the Tribunal. The assessee has also submitted affidavit dated 19<sup>th</sup> April 2013 to support the prayers for condonation of delay in filing this appeal late by 24 days with the Tribunal. The assessee submitted that the delay was not intentional and the delay occurred solely due to his ill health and indisposition as set out above and prayed for condonation of delay in filing the appeal before the Tribunal by 24 days.

4. The ld. D.R., on the other hand, opposed to the condonation of delay.

5. We have heard and considered the rival submissions and perused the material on record. We have observed from the assessee's affidavit dated 19-04-2013 and the application for condonation of delay dated 15-02-2013 that the assessee was prevented by sufficient cause in filing his appeal before the Tribunal which is also borne out from Medical certificate filed by the assessee.

The assessee was not in a position to file the appeal in time on account of his ill health and indisposition. In our considered view, this is a fit case for condoning the delay of 24 days in filing of the appeal with the Tribunal as there is no deliberate delay on the part of the assessee rather the delay is due to the assessee's indisposition and ill-health. In view of the afore-stated bonafide reasons cited by the assessee which are clearly reflecting from his affidavit and in the light of the decision of Hon'ble Supreme Court in the case of Collector of Land Acquisition v. Mst. Katiz and Others [1987] 167 ITR 471 (SC), we deem it fit and proper to condone the delay of 24 days in filing the appeal before the Tribunal and accordingly condone the same and admit the appeal.

6. The brief facts of the case are that as per the information received from AIR furnished u/s 285BA of the Act, the A.O. observed that the assessee sold property for a consideration of Rs. 50 lacs during the previous year 2004-05 relevant to the assessment year 2005-06. Notice u/s 142(1) of the Act was issued by the AO to the assessee calling for the return of income for the assessment year 2005-06 and also details with respect to the property sold was called from the assessee by the AO, but the assessee did not comply with the same. Thus, best judgment assessment was framed by the AO u/s 144 of the Act vide assessment orders dated 26<sup>th</sup> December, 2007 passed by the AO making addition of Rs.50,00,000/- in the hands of the assessee on account of sale consideration of the property sold of Rs.50,00,000/- as per the information received from AIR by the A.O.

7. Aggrieved by the assessment orders dated 26-12-2007 passed by the A.O. u/s 144 of the Act, the assessee filed his first appeal before the learned CIT(A).

8. Before the learned CIT(A), the assessee submitted that the land bearing survey No. 239 and 240 collectively admeasuring 2500 sq. meters owned by the family was purchased in April, 1971 from Sri Ziprya Joma Tanki and the same was registered in Thane on 23<sup>rd</sup> December, 1983. The assessee share in this property is 12.5% while rest is owned by family members. After claiming Rs. 1 lac as brokerage from the sale consideration and considering the cost of acquisition at Rs. 150 per sq. meters as on 1st April, 1981, the assessee worked out the indexed cost of acquisition at Rs. 18 lacs resulting into long term capital gain of Rs. 31 lacs. Since , the assessee's share in this land is at 12.5%, the long term capital gain worked out at Rs. 3,87,500/- which was accepted by the learned CIT(A). The assessee claimed deduction u/s 54F of the Act , whereas the estimated investment of Rs. 8 to 10 lacs was made by the assessee for construction of new house against which claim of deduction u/s 54F of the Act was made by the assessee. Since the assessee submitted fresh evidences for the first time before the learned CIT(A), remand report from A.O. was called by the learned CIT(A) in accordance with Rule 46A of Income Tax Rules, 1962. The A.O. also accepted that the assessee received 12.5% of the sale consideration as the assessee share in land was 12.5%. Rest of the shares belongs to his family members. However, the A.O. doubted the investment made in the construction of new house in the remand report. The copy of the remand report submitted by the AO was given by the learned CIT(A) to the assessee for his rejoinder. The assessee submitted in rejoinder that the deduction u/s 54F of the Act be allowed to the assessee. The learned CIT(A) considered the facts, submission of the assessee and the remand report from the A.O. The learned CIT(A) after perusal of the bank statement of the assessee with respect of bank account with Parsik Janata Saakari Bank Limited observed that for the period from 1.4.2005 to 31.3.2007 , the assessee has deposited the money i.e. sale consideration in Bank Account resulting into total balance of Rs. 11,37,033/- as on 10<sup>th</sup> March, 2007 , but no withdrawal's were made by the assessee during that period from the bank

account where the sale proceed of the property was credited. Hence, the learned CIT(A) observed that some undisclosed sources have been utilized for construction of the new house, so deduction u/s 54F of the Act cannot be allowed unless the assessee furnished concrete evidences in respect of source as well as quantum of investment for the construction of the new house. The learned CIT(A) thus held that assessee is not entitled for deduction u/s 54F of the Act, vide appellate orders of the learned CIT(A) dated 17-12-2012.

9. Aggrieved by the appellate orders dated 17-12-2012 of the learned CIT(A), the assessee is in appeal before the Tribunal.

10. Before the Tribunal, the learned Counsel for the assessee submitted that the assessee owned a piece of land along with his family members which was sold for a consideration of Rs. 50 lacs during relevant previous year. Information was received by the AO from AIR and based on the AIR information, the A.O. made addition of Rs. 50 lacs in the hands of the assessee being the entire sale consideration of the property. The assessee was never subjected to income tax proceedings earlier. The assessee was not aware of the manner in which the proceedings before the Income Tax Authorities are conducted and hence the assessee was not represented before the A.O. which led to the additions being made in the hands of the assessee. The learned counsel for the assessee submitted that there was a family settlement which was arrived at between the family members. The entire details were submitted before the learned CIT(A). It was submitted that the additional evidences were also submitted before the learned CIT(A). Remand report was called by the learned CIT(A) from the A.O. whereby additional evidences which were submitted for the first were forwarded to the AO for his verification, examination and comments thereof. The ld. CIT(A) admitted all the evidences and accordingly deduction u/s 54F was claimed which was denied by the authorities below. The ld. Counsel submitted that the assessee

has duly filed the property tax receipts and confirmation letter issues by one Mr. Balkrishna P Patil, a highly reputed Nagarsevak of the area where the assessee constructed the house, which justify that the investments have been made in the construction of new house entitling assessee for deductions u/s. 54F of the Act.

11. The ld. D.R., on the other hand, relied on the orders of the learned CIT(A).

12. We have considered the rival submissions and also perused the material available on record. We have observed that the assessee has earned capital gain on sale of property. The assessee has 12.5% share in the property sold which was accepted by the learned CIT(A) and the A.O. also in the remand report proceedings and hence now there is no dispute with respect to the share of the assessee in the property which was sold by the assessee. The assessee's share in the capital gains comes to Rs. 3,87,500/- which is not in dispute. The dispute is regarding the deduction u/s 54F of the Act whereby the assessee has produced certain evidences to claim that he has made investment in the construction of new house. However, the A.O. doubted the constructing the new house and also quantum of investment in the new house with respect to claim of the assessee u/s 54F of the Act. In our considered view and in the interest of justice, the matter needs examination and verification of the claim and contentions of the assessee with respect to the investment made in the new house for claiming deduction u/s. 54F of the Act , and accordingly we set aside the appellate order dated 17-12-2012 of the learned CIT(A) and also the assessment orders dated 26-12-2007 of the AO passed u/s 144 of the Act and restore the issue with respect to eligibility of the assessee for deduction u/s 54F of the Act , to the file of the A.O. for examination and verification of the claim and contention of the assessee on merits with respect to the investment made in the construction of

new house. The assessee is directed to appear before the A.O. and submit all the relevant evidences and explanation before the A.O. to substantiate his claims and contentions that he has made investment in the new house and the sources for making the investment to establish his entitlement for deduction u/s 54F of the Act and its quantification. These evidences shall be admitted by the A.O. who shall decide the issue de-novo on merits after considering all the relevant evidences and contentions of the assessee and conducting due enquiries as may be deemed fit in this regard. The assessee may be given proper and adequate opportunity of being heard in accordance with the principles of natural justice in accordance with law. We order accordingly.

13. In the result, the appeal filed by the assessee in ITA NO. 3073/Mum/2013 for the assessment year 2005-06 is allowed for statistical purposes.

Order pronounced in the open court on 3<sup>rd</sup> June , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 03-06-2016 को की गई ।

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **03-06-2016**

व.नि.स./ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "B" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai