

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI B BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President),  
and Aby T Varkey (Judicial Member)]**

ITA No.: 416/Mum/2022  
Assessment year: 2011-12

**RBI Employees Bhagwati Co-operative Housing Society Limited,** .....Appellant  
*Mithaghar Road, Mulund (E), Mumbai 400081*  
*[PAN: AAAAR8956K]*

Vs.

**Income Tax Officer-29(3)(2)** .....Respondent  
**Mumbai**

**Appearances by:**

**Fenil Bhatt, alongwith Chintan Shah** for the appellant  
**Aditya Rai** for the respondent

Date of concluding the hearing : 22/06/2022  
Date of pronouncing the order : 27/06/2022

**O R D E R**

**Per Pramod Kumar VP**

1. By way of this appeal, the assessee appellant has challenged correctness of the *ex-parte* order dated 27<sup>th</sup> December 2021 passed by the learned CIT(A) in the matter of assessment under section 143(3) r.w.s 147 of the Income Tax Act, 1961, for the assessment year 2011-12.

2. Grievances raised by the assessee appellant, as set out in the memorandum of appeal, are as follows:

**Ground I: Reopening of assessment bad in law**

1. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in confirming the action of Income Tax Officer ("ITO") in reopening the assessment under section 147 of the Act.

2. The Appellate prays that reopening of assessment under section 147 of the Act is void ab-initio and/or otherwise bad-in-law.

**Ground II: Want of Natural Justice**

1. On the facts and circumstances of the case and in law, the National Faceless Appeal Centre ('NFAC') erred in confirming the action of Ld. AO without providing proper opportunity of being heard.

2. The NFAC confirmed the action of the Ld. AO without adjudicating the additional grounds of appeal filed by the Appellant.

3. The Appellant prays that the order of Ld. AO be set aside.

*Without prejudice to Ground No. I and II*

Ground III: Addition of Rs. 4,97,63,330/- as Long term capital gain

1. On the facts and circumstances of the case and in law, the NFAC erred in confirming the action of ITO in charging to tax an amount of Rs. 4,97,63,330/- as long term capital gain u/s.45 on transfer of re-development rights on the alleged ground that the capital gain on transfer of property for re-development is chargeable in the hands of the Appellant.

2. The Appellate prays that addition amounting to Rs. 4,97,63,330/- as long term capital gain made by the AO be deleted.

*Without prejudice to Ground No. I, II and III*

Ground IV:

1. On the facts and circumstances of the case and in law, the NFAC erred in confirming the action of ITO in not allowing the Appellant the option of substituting the F.M.V as on 1.4.1981 duly indexed in term of section 55 r.w.s 48 of the Act.

2. The Appellate prays if it is held that Capital Gain is charged to tax then the AO be directed allow deduction in respect of F.M.V as on 1.4.1981 duly indexed as per law.

*Without prejudice to ground I, II, III & IV*

Ground V: Levy of Interest u/s. 234A & 234B of the Act.

1. On the facts and circumstance of the case and in law, the AO erred in charging interest u/s.234A & 234B of the Act.

2. The Appellant prays that the levy of interest u/s. 234A & 234B of the Act be deleted.

Ground VI: General

*The Appellant craved leave to add to, alter and/or amend the above grounds of appeal.*

3. When this appeal came up for hearing it was noticed that the impugned order passed by the learned CIT(A) is passed ex-parte qua the assessee on the ground that despite the assessee having being given sufficient opportunities, there was non-compliance of the notices of hearing issued by the learned CIT(A). When learned counsel for the assessee was confronted with this observation in the impugned order it is submitted that non-compliance was for bonafide reasons beyond his control and that if given another opportunity of hearing before the learned CIT(A), he will ensure that there is scrupulous compliance to the notices issued by the learned CIT(A). It was thus submitted that the matter may be restored to the file of the learned CIT(A) for fresh adjudication on merits. Learned Departmental Representative did not seriously oppose the prayers so made by the learned counsel for the assessee even though it was pointed out that the assessee's past conduct does not inspire much faith in his present assurances.

4. Having heard the rival contentions and having perused the material on record, we are of the considered view that in the interest of justice and equity one more opportunity of hearing before the learned CIT(A) should be given to the assessee. We therefore, we deem it fit and

proper to remit the matter to the file of the learned CIT(A) for adjudication de-novo by way of the speaking order, in accordance with the law, and of course after giving yet another opportunity of hearing to the assessee. We also deem it appropriate to caution the assessee to ensure that there is full cooperation on the assessee's part to ensure expeditious disposal of the remand proceedings. With these directions the matter stands restored to the file of the learned CIT(A)

5. As the matter is being remitted for fresh adjudication by the learned CIT(A), we see no need to deal with the grievances raised on merits. All these grievances, given our directions for remand to the learned CIT(A), are academic as of now.

6. In the result the appeal is allowed for statistical purposes. Pronounced in the open court today on the 27<sup>th</sup> day of June, 2022.

Sd/-

**Aby T Varkey**  
(Judicial Member)

Sd/-

**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 27th day of June, 2022**

*Copies to:* (1) *The appellant* (2) *The respondent*  
(3) *CIT* (4) *CIT(A)*  
(5) *DR* (6) *Guard File*

*By order*

*Assistant Registrar/ Sr PS*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*