

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.4702/M/2019
Assessment Year: 2013-14**

Shri Dilip B. Patel, C-1/504, Satellite Classic, Station Road, Jogeshwari(E), Mumbai – 400 068 PAN: AIOPP9402F	Vs.	ACIT 2(1)(2), Room No.561, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Anil Gupta, D.R.

Date of Hearing : 27 . 09 . 2022
Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Dilip B. Patel (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 28.05.2019 passed by Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2013-14 on the grounds inter alia that :-

“1. The Id. CIT(A) erred for various reasons in confirming validity of reopening.

2. The Id. CIT(A) erred in confirming assessment which was without deciding objection against validity of reopening.

3. The Id. CIT(A) erred in confirming addition on merits because the very same registered agreement proves loss and not income.

4. The appellant reserves right to add amend or alter any or all Grounds of Appeal.

5. The order of Id. CIT(A) is perverse hence cost be awarded to the appellant.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee has filed return of income for the year under consideration at the total income of Rs.56,850/-. Subsequently, writ petition bearing No.1168 of 2016 was filed by one Shri Vinod Keshavji Faria on 16.04.2016 before Hon'ble Bombay High Court in which assessee was one of the respondents. In the writ petition one assignment agreement entered into by the assessee with Shri Iqbal Abbas Kanche was relied upon, which shows that the assessee had received an amount of Rs.25,00,000/- from Shri Iqbal Abbas Kanche for assignment of his rights in SRA project of Muslim Nagar, Sadabahar Co-op Hsg. Scty. Ltd. On the basis of this information the Assessing Officer (AO) reopened the assessment under section 147 of the Act by way of issuance of notice under section 148 of the Act. Assessee appeared and opted to treat his return originally filed under section 139 of the Act in response to the notice issued under section 148 of the Act. The AO, on the basis of assignment agreement, adopted the consideration for relinquishment of rights at Rs.25,00,000/- against which deduction of Rs.19,99,127/- was allowed being the indexed cost of the expenditure incurred by the assessee and accordingly computed the long term capital gain at Rs.5,00,873/- and thereby added the same to the total income of the assessee while making assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the addition made by the AO by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. Present appeal was instituted by the assessee on 09.11.2020, thereafter 16 opportunities were given to the assessee by way of issuance of notice through registered post with acknowledgement due (RPAD), which have not been received back served or unserved and presumed to have been served upon the assessee. Consequently, the Bench has decided to dispose of this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. I have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. At the very outset, it has come on record that during assessment proceedings the assessee has vehemently pleaded and contended that he has not been provided with an opportunity of being heard nor has been provided with the documents relied upon.

7. It is also a matter of record that the assessee has not been supplied with material on the basis of reasons for reopening were recorded nor assessee has been supplied with copy of agreement which is the basis of making addition. In para 7 of the assessment order it is admitted fact on record that assessee vide letter dated 14.09.2017 received by the AO on 15.09.2017 filed objections to

the reopening which have been extracted in the assessment order, but assessment order is silent if such objections filed by the assessee were ever disposed of by passing specific order.

8. When I have examined the impugned order passed by the Ld. CIT(A) in the light of the written submissions filed by the assessee, the assessee had been making requests to the AO as well as Ld. CIT(A) to supply the material/documents on the basis of which reason for reopening was recorded by the AO as is evident from page 4, para 5.17 of the impugned order passed by the Ld. CIT(A).

9. The assessee has filed written submissions during the appellate proceedings, specifically asking for supply of the materials, which have been denied by the AO, on the basis of which reasons for reopening were recorded. The assessee has also challenged approval for reopening granted by Ld. JCIT, but again for want of documents which the AO has not supplied he could not raise these objections. In order to argue the matter on merits assessee for the reason best known to him has not preferred to put in appearance after appearing before the court for the first two dates. In these circumstances, I am of the considered view that assessee has not been provided with adequate opportunity of being heard by the AO which is a mandatory requirement to comply with the rule of natural justice. To decide the issue once for all and to curtail the multiplicity of proceedings and to carry out the proper investigation the issue is required to be remitted back to the AO to decide afresh after providing opportunity of being heard to the

assessee after supplying the documents requisitioned by the assessee.

10. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.