

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.290/Chny/2021  
निर्धारण वर्ष/Assessment Year: 2015-16

Pillapakkam Bahugudumbi Mukunthan, Vs. The Income Tax Officer,  
19, Rajaji Street, Chengalpet, Non Corporate Ward 22(2),  
Kancheepuram 603 001. Tambaram, Chennai.  
**[PAN:CRVPM0640J]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 07.02.2023  
घोषणा की तारीख /Date of Pronouncement : 15.02.2023

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.07.2021 relevant to the assessment year 2015-16.

2. Brief facts of the case are that the assessee is an individual, deriving income by way of sale of plots and obtained PAN on 27.12.2015. He filed his return of income for the assessment year 2015-16 on 25.09.2015 for the first time admitting returned income of ₹.20,19,207/-.

The case was selected for limited scrutiny to examine increase in capital. Notice under section 143(2) of the Income Tax Act, 1961 [“Act” in short] dated 27.07.2016 was served on 06.08.2016. Subsequently, notice under section 142(1) of the Act was issued on 26.05.2017. After considering the details and submissions of the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 30.12.2017 assessing total income of the assessee at ₹.41,66,422/- after making various disallowances. On appeal, the Id. CIT(A) confirmed the assessment order by dismissing the appeal of the assessee.

3. On being aggrieved, the assessee is in appeal before the Tribunal.

Before us, the assessee has raised the following grounds:

1. *The order of National Faceless Appeal Centre at Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1034536307(l) dated 30,07,2021 for the above assessment year is contrary to law, facts, and in the circumstances of the case.*

2. *The NFAC erred in sustaining the order of assessment in reworking gross profit at Rs.48,50,426/- in rejecting the stand of the appellant without assigning proper reasons and justification.*

3. *The NFAC failed to appreciate that the sustenance of recomputation of gross profit for the purpose of taxation by the Assessing Officer was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.*

4. *The NFAC failed to appreciate that the reworking of the opening capital upon rejecting the explanation offered by the relevant details and evidences which had a cascading impact on the determination of the gross profit was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.*

5. *The NFAC failed to appreciate that the reasons given by the Assessing Officer in the assessment order in reworking the gross profit at Page No. 14 of the assessment order were completely opposed to the facts available on record and ought to have appreciated that the findings recorded in the impugned order were*

*completely silent on the issues raised for consideration/ in the appellate proceedings initiated before them.*

6. *The NFAC failed to appreciate that the computation of business profit/GP in the business of real estate was correctly projected before the Assessing Officer based on the evidences placed on record and ought to have appreciated that the aggregation of land in the year 2005 based on the evidence produced was wrongly rejected by solely going by the registered documents, thereby vitiating the related findings,*

7. *The NFAC failed to appreciate that the entire recomputation of the taxable total income was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law and ought to have appreciated that the stand taken in the letter dated 20.09.2018 and 6.6.2018 was not taken into consideration, thereby vitiating the related findings on the gross violation of the principles of legitimate expectation.*

8. *The NFAC failed to appreciate that the in any event the non-consideration of the return of income in reporting the assessable income as per section 44AD of the Act would vitiate the entire action in reworking the gross profit for taxation.*

9. *The NFAC failed to appreciate that the sustenance of the disallowance of claim of certain expenses in the recomputation of gross profit on various facets was wrong, erroneous, unjustified, incorrect, invalid and not sustainable both on facts and in law.*

10. *The NFAC failed to appreciate that there was no proper / reasonable opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.*

11. *The Appellant craves leave to file additional grounds/arguments at the time of hearing.”*

4. On the other hand, the Id. DR has strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In the assessment order, the Assessing Officer was of the view that the cost of the properties has to be adopted at ₹. 52,11,000/- and hence the opening capital for the year has to be adopted at ₹. 52,47,000/-. The AR of the

assessee, in his letter dated 12.12.2017 stated that the opening stock was worked out as below:

Opening Capital as per assessee	Rs. 2.38 Crore
Sundry Creditors	Rs. 2.78 Crore
Opening Stock	Rs. 5.16 Crore

Now since the opening capital arrived at ₹. 52,47,000/- the value of opening stock is worked out as below:

Opening Capital of assessee reworked	Rs. 52,47,000/-
Add: Sundry Creditors	Rs. 2,78,50,000/-
Opening Stock	Rs. 3,30,97,000/-

- The total square feet of the area developed is 4,37,964 Sq. ft.
- The Cost Per Sq. ft. is ₹.3,30,97,000/- divided by 4,37,964=₹. 75.57/-
- During the year, the assessee sold 8444 Sq. ft of plots. Hence the value of Closing Stock is ₹.3,24.58,826(i.e. 4,29,520 Sq.ft X ₹.75.57)
- Hence Opening Stock + Sales - Closing Stock i.e.3,30,97,000+ 54,88,600 - 3,24,58,826 = **₹. 48,50,426 = Gross profit**

6. However, during the course of assessment, the AR of the assessee has stated before the Assessing Officer that the assessee has admitted income under section 44AD of the Act. Since the assessee has not filed any details under Column 53 meant for 44AD cases, the Assessing Officer has not accepted the above stand of the assessee as the assessee has filed e-return of income in Form No. ITR -4 and filled in columns of balance sheet, Profit & Loss account, filled in Column No .38 under expenses, Column No. 24 for professional fees etc.

7. Moreover, during the course of assessment proceedings, vide letter dated 19.07.2017, the assessee filed the profit and Loss account, working out the Net Profit in the regular manner by claiming expenses before the Assessing Officer. When the assessee was asked to furnish the details for working Net Profit, he suddenly stated that he filed return under section 44AD of the Act. Thus, the Assessing Officer observed that the argument of the assessee was inconsistent with reference to facts. Further the Assessing Officer has observed that if the assessee had to offer income under section 44AD of the Act, the income of the assessee would work out to only ₹.4,39,088/-, whereas, the returned income of the assessee was ₹. 20,19,207/-. Moreover, since the assessee did not furnish the details of expenses, the Assessing Officer has disallowed the site development expenses of ₹.11,56,600/- in full and the marketing expenses by 50% i.e. ₹. 6,33,300/-. The basis adopted to disallow 50% of the marketing expenses was not brought on record. On appeal, the Id. CIT(A) simply confirmed the assessment order.

8. Under the above facts and circumstances, we are of the considered opinion that the entire matter goes to the root of return of income filed by the assessee to determine as to whether the return of income was filed under normal provisions or filed under section 44AD of the Act as facts

are contrary. Being first year of filing of the return of income, we are of the view that the assessee shall be given one more opportunity of being heard to confirm as to whether the return filed by the assessee was under normal provisions or under section 44AD of the Act along with complete details of expenses of site development expenses, marketing expenses, etc. before the Assessing Officer and the Assessing Officer shall re-examine matter afresh and pass detailed order in accordance with law.

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

Order pronounced on 15<sup>th</sup> February, 2023 at Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 15.02.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,  
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &  
6. गार्ड फाईल/GF.