

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.367/PUN/2023

निर्धारण वर्ष / Assessment Year : 2008-09

ITO, Ward-3, Panvel	Vs.	Arun Tulsidas Sheth, 996, Ground Floor, Kaustubh Sea Face, Alibag, Raigad – 402201 Maharashtra PAN : AYJPS1932Q
Appellant		Respondent

Assessee by None  
Revenue by Shri Ramnath P. Murkunde

Date of hearing 31-05-2023  
Date of pronouncement 01-06-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the Revenue is directed against the order dated 27-01-2023 passed by the CIT(A) in National Faceless Appeal Centre (NFAC) u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2008-09.

2. Succinctly, the facts of the case are that the assessee is engaged in the business as an estate agent. Without entering into any formal agreement, the assessee started procuring lands from farmers on commission basis for Reliance Industries Ltd,

which started acquiring lands for its SEZ project from Pen Taluka. Survey took place at the premises of the assessee on 10-03-2010. The survey team enquired about expenditure under the head "Land, Development and Commission" amounting to Rs.3,48,89,228/-. The assessee explained that a sum of Rs.1.00 crore was given as commission; and the balance amount was incurred towards owners of land as incentive. Since tax was not deducted at source from commission of Rs.1.00 crore, the assessee surrendered additional income to that extent. Out of the remaining expenses, a further amount of Rs.20.00 lakh was surrendered towards unverifiable expenses. Thus, out of total Rs.3.48 crore, a sum of Rs.2.28 crore was allowed as deduction in the assessment u/s.143(3) of the Act. Thereafter, proceedings u/s.147 were taken by means of notice u/s.148 towards the balance amount of Rs.2.28 crore. In the order passed u/s.143(3) r.w.s.147, the AO made further disallowance of Rs.2.28 crore. The Id. CIT(A) got convinced with the stand point of the assessee and held that there was no failure on the part of the assessee to disclose any material facts necessary for completion of the assessment. He accordingly deleted the addition. Aggrieved thereby, the Revenue has approached the Tribunal.

3. We have heard the ld. DR and perused the relevant material on record. There is no appearance from the side of the assessee despite notice. Original assessment in this case was completed u/s.143(3) on 03-12-2010. Notice u/s.148 was issued on 24-03-2015, i.e., after a period of four years from the end of the relevant assessment year. First proviso to section 147 provides that where an assessment has been completed u/s.143(3), no action can be taken u/s.147 after expiry of four years from the end of the relevant assessment year unless an income chargeable to tax escaped the assessment by reason of failure on the part of the assessee, *inter alia*, to make full and true disclosure of all material facts. The case under consideration involves assessment year 2008-09. Original assessment in this was completed u/s.143(3). Notice u/s.148 was issued on 24-03-2015, which is after a period of four years from the end of the relevant assessment year. It is apparent from the reasons for re-assessment and the resultant addition that the AO wanted to re-verify the expenses of Rs.2.28 crore, which were duly examined in the course of original assessment u/s.143(3) of the Act. In view of the foregoing legal position, tested on the touchstone of the factual matrix of the case, we are

satisfied that the decision taken by the Id. CIT(A) does not require any interference. The same is, therefore, upheld.

4. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 01<sup>st</sup> June, 2023.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
**JUDICIAL MEMBER**

Sd/-  
(R.S.SYAL)  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 01<sup>st</sup> June, 2023  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	31-05-2023	Sr.PS
2.	Draft placed before author	31-05-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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