

आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.718/PUN/2023
निर्धारण वर्ष / Assessment Years : 2013-14

Idrus Ibrahim Shaikh, At & Post Vengurla, Sindhudurg – 416516. PAN: AEPPS 5997 B	Vs	The Income Tax Officer, W-Kudal, Kudal – 416520.
Appellant / Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri Manojkumar Tripathi – DR
Date of hearing	20/07/2023
Date of pronouncement	24/07/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeal)National Faceless Appeal Centre, Delhi dated 24.03.2023 emanating from the assessment order dated 29.09.2021 under section 147 r.w.s 144 of the Income Tax Act, 1961 for the A.Y.2013-14. The Assessee has raised the following grounds of appeal:

- “1. Whether on the facts and in the circumstances of case and in law, CIT(A) was correct in passing Ex-parte Order without considering the adjournment request filed for availing certain evidence from government department ?

2. *Whether AO as well as CIT(A) is correct in computing Capital Gains arising from Development Agreement, as short-term Capital Gain, without considering the Period of holding of asset (being long-term) and Cost of Acquisition ?*
3. *AO as well as CIT(A) has erred in not allowing Exemption under section 54 and or under section 54F, as it is evident from development agreement itself that appellant has received constructed flat as consideration for developing the property.”*

Brief Facts of the case :

2. At the outset of hearing, none appeared on behalf of the assessee. It is observed that ld.CIT(A) has dismissed the appeal of the assessee on account of non-appearance. The ld.CIT(A) has not discussed the merits of the case.

3. The ld.Departmental Representative(ld.DR) of the Revenue relied on the orders of Lower Authorities.

4. We have heard ld.Departmental Representative of the Revenue. The ld.CIT(A) has dismissed the appeal of the assessee in para 8.8 of the order without discussing merits of the case merely for non-appearance. It is mandatory for the ld.CIT(A) to discuss the grounds of appeal on merit and pass a speaking order. However, in this case the ld.CIT(A) failed to pass a speaking order.

4.1 We find that the decision in ITAT Amritsar Bench Kashmir Road Lines Vs. DCIT, [2021] 123 taxmann.com 5 held as under :

3. Coming to the merits of the case, from the impugned order it reflects that though the Ld. CIT(A) fixed the case for hearing on various dates, however on most of the dates, the Assessee neither attended the appellate proceedings nor filed any adjournment application and therefore the Ld. CIT(A) while observing that the appellant/assessee is not interested in pursuing its appeal, dismissed the same.

4. We have given our thoughtful consideration to the order impugned herein. The Appellant most of the times, did not bother itself on one or other reason(s) to appear and co-ordinate with appellate proceedings even after availing various opportunities. Although the instant appeal of the assessee is liable to be dismissed in order to give effect to the principle that law does not assist the person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant, without asserting them in a court of law. The, principle which forms the basis of this rule is expressed in the maxim vigilantibus, non dormientibus, jura subveniunt (Law assists those who are vigilant and not those who sleep over their rights), but even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human and is more a practical notion of human behavior than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature

permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine, therefore, considering the facts that the Ld. CIT(A) did not pass the order under challenge on merit, we feel it appropriate to set aside the impugned order and to remand back the instant case to the file of the Ld. CIT(A) for decision afresh on merits, suffice to say while affording proper and reasonable opportunity of being heard to the assessee/appellant, in order to follow the principle of natural justice. We also feel it appropriate to direct the Assessee/Appellant to extend its full co-operation and participation in the appellate proceedings before the Ld. CIT(A) as and when would be required and in case of default, the assessee shall not be subjected to any leniency.

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

5. Therefore, respectfully following the above decision and in the principles of natural justice, the case is set-aside to ld.CIT(A) for denovo adjudication. Ld.CIT(A) shall provide opportunity to the assessee. The Assessee shall file all necessary details before the ld.CIT(A). Accordingly, grounds of appeal of the assessee are allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 24th July, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th July, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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