

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1395/Mum/2023
(Assessment Year: 2013-14)

Urmila Lalmani Rai, Legal heir of Late Lalmani Ramswaroop Rai A-1/121, MMRDA Building, Wadala Truck Terminal, Near RTO, Chembur, Wadala, Mumbai - 400037	Vs.	ACIT- 27 (2) Tower No. 6, 4 th Floor, Vashi Railway Station commercial Complex, Vashi, Navi Mumbai-400703
PAN/GIR No. AADPR6146D		
(Appellant)	:	(Respondent)
Assessee by	:	None
Revenue by	:	Shri Sunny Mathews, DR
Date of Hearing	:	10.07.2023
Date of Pronouncement	:	31.07.2023

ORDER

PER KAVITHA RAJAGOPAL, J M:

1. This appeal has been filed by the assessee challenging the order of Learned Commissioner of Income Tax (Appeals)-25 [hereinafter “the Ld. CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 [hereinafter “the Act”] relevant to the assessment year [hereinafter “the A.Y.”] 2013-14.
2. As there was no representation on behalf of the assessee, we hereby proceed to decide this appeal by hearing the Learned Departmental Representative [hereinafter “the Ld. DR”] and on perusal of the materials available on records.

3. The assessee has challenged the following grounds of appeals:

1. General:

On the facts and circumstances of the case and in law, the learned National Faceless Appeal Centre (NFAC) has erred in dismissing the appeal and thereby confirming the order passed under 143(3) of the Income Tax Act, 1961 ('Act').

2. Assessment order passed on a dead person

2.1. On the facts and circumstances of the case and in law, the Ld. NFAC failed to appreciate that the assessment order u/s 143(3) was passed on the dead using on dead and the order is void ab-initio, bad-in-law and liable to be quashed in limine.

3. Non-speaking order / Non-adjudication of Grounds

3.1. On the facts and circumstances the case and in law, the Ld. NFAC failed to consider the revised grounds and submissions filed before NFAC, and thus has erred in non-adjudication certain grounds and thereby passing a non-speaking order.

4. Natural justice violated

4.1. On the facts and circumstances of the case and in law, the Ld. NFAC failed to grant sufficient opportunity to present the case and thus principles of natural justice are gross violated.

5. Exemption u/s 54/54F

5.1. On the facts and circumstances of the case and in law, the Ld. NFAC failed to adjudicate the ground for claiming exemption u/s 54/54F for advance of Rs. 50 lacs towards purchase of second new residential house at 202, Krishna Homes Ltd.

5.2. *On the facts and circumstances of the case and in law, the Ld. NFAC failed to appreciate that the Appellant is eligible for exemption under section 54/54F of Rs. 50 lacs from capital gains even on purchase of second residential flat.*

6. Revised short term gain on sale of agricultural land

6.1. *On the facts and circumstances of the case and in law, the Ld. NFAC failed to appreciate that there was an erroneous computation of Rs.10,172,172/- which was realised later. The Ld. NFAC erred in computing the short term capital gains arising from sale of agricultural land at Rs.10,17,172/- as against the revised computation of Rs.5,39,172/-.*

7. Interest u/s 2348

7.1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the interest u/s 234B levied by the Assessing officer.*

8. *All the above grounds are without prejudice to each other. The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds at any time before or at the time of hearing of the matter with the Income Tax Appellate Tribunal.*

4. The brief facts are that the assessee is an individual and had filed her return of income dated 31.10.2013 declaring the total income at ₹ 29,37,400/-. The assessee's case was selected for scrutiny and assessment order dated 18.01.2016 was passed u/s 143(3) of the Act where the Ld. AO determined the total income at ₹ 80,04,404/- by making various addition/disallowance.

5. The assessee was in appeal before the Ld. CIT(A) challenging the assessment order and addition made by the Ld. AO. The ld. CIT(A) upheld the order of the Ld. AO

vide an exparte order dated 02.03.2023 on the ground that the assessee has failed to furnish documentary evidence in support of her claim.

6. Aggrieved, the assessee is in appeal before us challenging the order of the Ld. CIT(A).

7. We have heard the Ld. DR and perused the materials available on records. It is observed that the assessee has declared short term and long term capital gain in her return of income. The assessee has declared short term capital gain from sale of land amounting to ₹ 10,17,172/- and long term capital from sale of residential flats amounting to ₹13,34,358/-. It is also observed that the assessee has claimed deduction u/s 54 of the Act towards purchase of residential flat as well as advance of ₹ 50,00,000/- paid for another flats while computing the long term capital. The Ld. AO during the assessment proceedings had allowed the claim of deduction u/s 54 amounting to ₹ 1,31,55,000/- towards purchase of residential flats but had disallowed advance of ₹ 50,00,000/- paid as advance towards another flats. The Ld. AO allowed the short term capital gain of ₹10,17,172 on sale of agricultural land at Karjat and made addition towards deemed income from house property.

8. The assessee was in appeal before the First Appellate Authority challenging the computation of short term capital gain which according to the assessee is ₹ 5,93,172 as that of ₹ 10,17,172. The Ld. CIT(A) dismissed the grounds raised by the assessee for the reason that the assessee has failed to furnish copy of purchase and sale documents and also the revised computation of short term capital gain.

9. The assessee has challenged the ground that the assessment order was passed on a dead person and that the Ld. CIT(A) has not given adequate opportunity of hearing along with the grounds of addition/disallowance made by the lower authorities. It is observed that the assessee even before us has not filed any supporting documentary evidence to substantiate her claim. In order adhere to principles of natural justice, we deem it fit to remand this issues back to the file of the Ld. CIT(A) for de nova adjudication on the basis of the evidences to be filed by the assessee before the Ld. CIT(A) and the assessee is directed to co-operate without any undue delay. We hereby remand this issue to the file of the Ld. CIT (A) to decide this appeal on the merits of the case.

10. In the result the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 31.07.2023

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai;

Dated : 31.07.2023

Aniket Singh Rajput, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai