

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1574/M/2023  
Assessment Year: 2016-17**

Late Shri Bhupendra Kantilal Desai (Legal Heir of appellant Shri Virendra Bhupendra Desai), Saffire, 7 <sup>th</sup> Floor, Linking Road, Santacruz (W), Mumbai – 400 054 <b>PAN: AAAPD7352A</b>	Vs.	Income Tax Officer-22(1)(3), Room No.319, 3 <sup>rd</sup> Floor, Piramal Chamber, Lal Buag, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Kirit S. Sanghvi, A.R. &  
Shri Shailesh B. Shethia, A.R.

Revenue by : Shri Ashok Kumar Ambastha, Sr. D.R.

Date of Hearing : 20 . 07 . 2023

Date of Pronouncement : 26 . 07 . 2023

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

The appellant, Late Shri Bhupendra Kantilal Desai (Legal Heir of appellant Shri Virendra Bhupendra Desai) (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income

Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2016-17 on the grounds inter-alia that:-

*“1. The learned CIT(A) erred on facts and in law in passing the impugned Order dated 15 March,2023 Ex-parte.*

*2. The learned CIT(A) erred on facts and in law in not appreciating that the appellant here had expired when the several notices referred to in the order dated 15th March,2023 were issued, and that nobody pursued the matter thereafter so as to take notice of receipt of several notices under section 142,143 etc.*

**Relief claimed:** *in Ground No.s 1 & 2. The impugned order be set aside and a fresh opportunity of being heard be granted.*

*3. The learned CIT(A) erred on facts in confirming the action of the AO in denying exemption from Long Term Capital Gains available on facts under s.54 or s.54F*

*4. The learned CIT(A) erred on facts in not considering the facts and issues arising therefrom in the Assessment Order dated 26 December,2018 as discussed by the AO.*

*5. Without prejudice to the above Grounds, learned CIT(A) erred on facts and in law in not considering other Grounds of Appeal which arose from the Assessment Order and were required to be disposed of.*

*The appellant craves leave to add to, alter, amend or modify the ground(s) of appeal”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: assessee has shown its income from partnership firm capital gains and income from other sources. During the scrutiny proceedings Assessing Officer (AO) after declining the contentions raised by the assessee made addition of Rs.5,76,96,000/- by way of disallowance on account of long term capital gain under section 45(1) of the Income Tax Act, 1961 (for short 'the Act') made a disallowance of Rs.29,15,000/- on account of stamp duty registration charges under section 69 made disallowance of Rs.2,50,000/- on account of difference in value of property under section 69 and thereby assessed the total income at

Rs.6,21,98,630/- by framing assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal due to non prosecution by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, 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 law applicable thereto.

5. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the appeal filed by the assessee has been dismissed for want of non prosecution by the assessee on the ground that despite numerous notices assessee has not responded nor filed written submissions/ information/ documents. It is settled principle of law that when appeal is filed before the Ld. CIT(A) by raising different issues the same is to be disposed of on merits by applying his mind even if the assessee does not appear and the Ld. CIT(A) is not empowered to dismiss the appeal due to non prosecution by the assessee as has been held by Honourable Bombay High Court in case of Commissioner of Income-tax (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay).

6. To decide the issues raised by the assessee once for all and to provide adequate opportunity of being heard to the assessee impugned order passed by the Ld. CIT(A) is set aside to the file of the Ld. CIT(A) to be decided afresh on merits after providing opportunity of being heard to the assessee.

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

**Order pronounced in the open court on 26.07.2023.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 26.07.2023.

\* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.