

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 528/Bang/2023
Assessment Year : 2016 – 17

Smt. Gowramma, C/o. V. Narasegowd, Gadikoppa Village, B.H. Road, Shimoga – 577 204. PAN: BOYPG2160J	Vs.	The Assistant Commissioner of Income Tax, Circle – 1, Shimoga.
APPELLANT		RESPONDENT

Assessee by	:	Shri Kashinath Kalmath, Advocate
Revenue by	:	Shri Subramanian .S, JCIT (DR)

Date of Hearing	:	11-10-2023
Date of Pronouncement	:	11-10-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order dated 30.05.2023 passed by NFAC, Delhi for A.Y. 2016-17 on following grounds of appeal:

	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>Order of the Learned CIT(A), NFAC made for the assessment year 2016-17 in the appellant's case is opposed to law and the appeal is dismissed ex-party without considering the</i>	Rs.66,83,652/-

	<i>merits of the case.</i>	
2.	<i>The Learned CIT(A) NFAC erred in holding the appellant did not respond to the notice dated 19-05-2023 and by request dated 10-05-2023 appellant has made a request, which has not been rejected before passing ex-party order.</i>	
3.	<i>The Learned CIT(A) NFAC erred in confirming the order of assessment in regard to capital gains for the assessment year 2016-17, when the Joint Development agreement was entered on 20-07-2011.</i>	
4.	<i>The Learned CIT(A) NFAC failed to appreciate as there is no transfer of sites on 08-06-2015 as alleged by the Learned Assessing Authority and transfer has been inferred on the basis of an allocation agreement.</i>	
5.	<i>The Learned CIT(A) NFAC erred in confirming deemed sale consideration at Rs.2,93,33,310/-holding there is a transfer of 5,924.70 arrived at by the Learned Assessing Authority.</i>	
6.	<i>The Learned CIT(A) NFAC erred in confirming deemed sale of value of square meter at Rs.4,951/- which is contrary to the proposal dated 06-09-2018 and further both values estimated is without any material on record.</i>	
7.	<i>The Learned CIT(A) NFAC ought to have considered what the appellant given was agricultural land which is not a capital asset to attract the provisions of capital gains and ought to have deleted the addition made by the learned Assessing Authority.</i>	
8.	<i>The Learned CIT (A) NFAC erred in confirming the interests levied u/s.234A, 234B & 234C of the Act.</i>	Rs.44,81,388/-
	<i>Appellant craves leave of this Hon'ble Tribunal to add delete/modify any ground/s at the time of hearing.</i>	
	<i>Total tax effect (see note below)</i>	Rs.1,11,65,040/-

2. Brief facts of the case are as under:

2.1 Assessee is an individual carrying on agricultural activity and owns agricultural land in the district of Shimoga. It has been submitted that the assessee along with her other family members had acquired the agricultural land by way of registered family partition and that they have been carrying out agricultural activity over a considerable period of time. For the year under consideration, assessee had not filed the return of income.

2.2 The survey u/s. 133A was conducted in case of Shri V. Narasegowda on 30.08.2017 wherein certain materials were found and impounded. On verification of the impounded materials, the Ld.AO noticed that assessee has got her share of developed sites to the tune of 5,924.70 sq.mtrs. as per registered deed dated 08.06.2015. Accordingly, notice u/s. 142(1) was issued calling for return of income for A.Y. 2016-17 which was served on assessee.

2.3 There was no response in respect of the notices issued u/s. 142(1) by the assessee. Subsequently another notice was sent calling for written submission from assessee in respect of proposed addition under the head Long Term Capital Gain. Thereafter on 05.10.2018, assessee submitted details in respect of the transfer of capital asset that was received by her through family partition. The assessee also filed a registered development agreement entered into by her and other family members with the developer. Based on all such details, the Ld.AO computed the

long term capital gains in the hands of the assessee at Rs.2,92,18,676/-.

2.4 On receipt of the assessment order, assessee filed appeal before the Ld.CIT(A).

2.5 The Ld.CIT(A) also issued notices to the assessee wherein adjournment request was filed. However, the Ld.CIT(A) dismissed the appeal for non-prosecution by holding as under:

“5. Bare perusal of the facts shows that the appellant has not effectively pursued the appeal despite being granted several opportunities as elaborated supra. The appellant has jeopardized her case by not giving tenable response despite several opportunities that were provided to her over a span of more than three years. Sufficient opportunities were provided to the appellant (vide the Notices referred supra) to come up with the ground-wise written submissions alongwith documentary evidence in support of her contentions raised vide Grounds of Appeal. However, no tenable reply has been filed in response to any of the Notices issued. So, her contentions raised vide Grounds of Appeal cannot be taken on face value.”

2.6 Against the order of the Ld.CIT(A), assessee is in appeal before this Tribunal.

3. We have perused the submissions advanced by both sides in the light of records placed before us.

3.1 In our opinion, it is appropriate to remit the issue to the file of the Ld.AO with the direction to the assessee to produce all necessary documents / evidences in respect of the partition of the land, share of the land that was attributable to the assessee, the agreement entered into by assessee with the developer under which the constructed premises has been received and the manner in which the long term capital gains has been invested by the assessee. The Ld.AO shall then carry out necessary

verification and call for any further details if required in order to consider the issue afresh in accordance with law.

Needless to Assessment Year that proper opportunity of being heard must be granted to the assessee.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 11th October, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 11th October, 2023.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore