

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

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

ITA No.594/Bang/2023
Assessment Year: 2016-17

Thimmaiah Suresh No.331, 7 <sup>th</sup> Cross, 3 <sup>rd</sup> Main Lakshmidivinagar Nandini Layout Bangalore 560 096  <b>PAN NO : CFLPS8890E</b>	<b>Vs.</b>	ACIT Circle-6(2)(1) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri S.V. Ravishankar, A.R.
<b>Respondent by</b>	:	Shri Subramanian S. D.R.

<b>Date of Hearing</b>	:	09.10.2023
<b>Date of Pronouncement</b>	:	09.10.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by assessee is directed against order of NFAC dated 14.6.2023 for the assessment year 2016-17. The assessee has raised following grounds of appeal:

- 1. The order of the learned Commissioner of Income tax (Appeals) passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
- 2. The learned Commissioner of income tax (Appeals) is not justified in law in stating that the appellant was given adequate opportunities by way of notices issued when the appellant has not received any of the said notices and consequently the order passed under section 250 of the Act dated 16.02.2023 is in violation of the principles of natural justice and requires to be set aside on the facts and circumstances of the case.*

3. *The learned Commissioner of Income tax (Appeals) is not justified in law in holding that the appellant/AR has refrained from submitting response/ submission during the entire appellate proceedings when the appellant has not received any of the said notices on the facts and circumstances of the case.*
4. *The learned Commissioner of Income tax (Appeals) is not justified in law in holding that the appellant is not interested in pursuing his own appeal on the facts and circumstances of the case.*
5. *The learned Commissioner of Income tax (Appeals) failed to adjudicate all the specific grounds of appeal vide No.2 to 5 of the grounds of appeal filed by the appellant before the learned Commissioner of Income-tax (Appeals) and consequently the order passed is in violation of the principle of natural justice and requires to be set aside on the facts and circumstances of the case.*
6. *The learned Commissioner of Income-tax (Appeals) ought to have made an attempt on serving the hearing notices issued under section 250 of the Act vide communication to the appellant's e-mail id or physically by way of Speed Post and consequently the impugned order passed without providing an opportunity of being heard to the appellant is in violation of the principles of natural justice on the facts and circumstances of the case.*
7. *The learned Commissioner of Income-tax (Appeals) is not justified in law in passing the impugned order, without granting another opportunity of hearing for filing the written submissions on each of the grounds of appeal and relevant documents in support of the case of the appellant on the facts and circumstances of the case.*
8. *The learned Commissioner of Income-tax (Appeals) is not justified in law in upholding the finding of the Assessing officer that the land sold by the appellant is an adventure in the nature of trade and consequently it has to be treated as income from business on the facts and circumstances of the case.*
9. *The learned Commissioner of Income-tax (Appeals) is not justified in law in upholding the finding of the Assessing officer that the appellant is not entitled to the benefits of exemption under section 54B of the Act a sum of Rs.1,67,42,250/- claimed by the appellant on the facts and circumstances of the case.*
10. *The learned Commissioner of Income-tax (Appeals) is not justified in law in upholding the addition of the learned Assessing officer, being profit earned from the business of sale of sites a sum of Rs. 2,33,19,841/- as against the capital gain a sum of Rs. 83,39,250/- declared by the appellant on the facts and circumstances of the case.*

11. *The Appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*

*For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”*

2. The facts of the case are that the assessee is an individual who entrusted the work of filing of return to his Chartered Accountant, Mr. Govinda Bhandary. B who filed the return of income for the AY 2016-17 on 20.01.2018 declaring a total income a sum of Rs. 91,20,500/-. Subsequently a notice under section 143(2) of the Income-tax Act, 1961 [‘the Act’ for short] was issued dated 14.08.2018 by the Income Tax Officer, Ward 6(2)(3) selecting the return filed for limited scrutiny for examination of "deduction/exemption from capital gains" and subsequently another notice under section 143(2) of the Act dated 29.09.2018 was issued by the learned Assistant Commissioner of Income-tax, Circle 6(2)(1) selecting the return filed for limited scrutiny for examination of "deduction/exemption from capital gains". The Chartered Accountant filed a reply to the said notice issued under section 143(2) of the Act dated 29.09.2018 on 12.12.2018. Further notices were issued under section 142(1) of the Act in response to which replies were filed and an assessment order was passed under section 143(3) of the Act dated 29.12.2018 by the Assistant Commissioner of Income-tax, Circle 6(2)(1) treating a business income a sum of Rs. 2,33,19,841/ - as against capital gain a sum of Rs. 83,39,250/ - offered by the assessee. The assessee being aggrieved by the said assessment order passed under section 143(3) of the Act dated 29.12.2018 sought to file an appeal before the learned Commissioner of Income-tax (Appeals). The Chartered Accountant, Mr. Govinda Bhandary. B who had filed the return, was not well versed with litigation and handed over the appeal to another Chartered Accountant firm,

Balu & Anand. The appeal was filed by Balu & Anand on 28.01.2019.

2.1 The learned Commissioner of Income-tax (Appeals), NFAC issued several notices under section 250 of the Act, however the assessee was not aware of any of the said notices as the same was not served on him. The learned Commissioner of Income-tax (Appeals), NFAC passed an ex-parte order under section 250 of the Act dated 14.06.2023 dismissing the appeal of the assessee. The assessee received a letter dated 03.07.2023 by Post on 05.07.2023 from the Assessing officer requesting payment of outstanding dues for AY 2008-09, for AY 2016-17, for AY 2017-18 a sum of Rs. 1,106/, Rs. 97,33,010/- and Rs. 144/- respectively. The assessee immediately approached the present counsel on 06.07.2023 and subsequently the counsel logged into the income tax e-portal and brought to the assessee's notice the order passed under section 250 of the Act by the learned Commissioner of Income-tax (Appeals), NFAC dated 14.06.2023 dismissing the assessee's appeal for allegedly not filing any response or submission. The assessee thereafter from the e-portal downloaded all the notices and order passed under section 250 of the Act and filed this appeal before this Tribunal.

2.2 The following notices issued under section 250 of the Act and letter dated 03.11.2022 intimating enablement of communication window were sent to the following email ids as stated in the table below.

<b>Si. No</b>	<b>Date of Issue</b>	<b>E-mail id sent to</b>
1.	31/12/2020	<a href="mailto:govindabhandaryassociates@gmail.com">govindabhandaryassociates@gmail.com</a>
2.	03/11/2022	<a href="mailto:govindabhandaryassociates@gmail.com">govindabhandaryassociates@gmail.com</a> , <a href="mailto:contactus@balunand.com">contactus@balunand.com</a> ;

3.	09/02/2023	<a href="mailto:govindabhandaryassociates@gmail.com">govindabhandaryassociates@gmail.com</a> ; <a href="mailto:contactus@balunand.com">contactus@balunand.com</a> ;
4.	22/02/2023	<a href="mailto:govindabhandaryassociates@gmail.com">govindabhandaryassociates@gmail.com</a> , <a href="mailto:contactus@balunand.com">contactus@balunand.com</a> ;
5.	06/03/2023	<a href="mailto:darshankrishna08@gmail.com">darshankrishna08@gmail.com</a> ,
6.	14/03/2023	<a href="mailto:darshankrishna08@gmail.com">darshankrishna08@gmail.com</a> ;
7.	23/03/2023	<a href="mailto:darshankrishna08@gmail.com">darshankrishna08@gmail.com</a> ,
8.	08/04/2023	<a href="mailto:darshankrishna08@gmail.com">darshankrishna08@gmail.com</a> ;
9.	02/05/2023	<a href="mailto:darshankrishna08@gmail.com">darshankrishna08@gmail.com</a> ;

2.3 The Id. A.R. for the assessee assessee submitted that the e-mail id [govindabhandaryassociates@gmail.com](mailto:govindabhandaryassociates@gmail.com) belongs to that of the assessee's Chartered Accountant Mr. Govinda Bhandary who filed the return of income of the assessee. However, the chartered accountant was suffering from health complications and expired on 21.10.2022 and the notices dated 31.12.2020, 09.02.2023 and 22.02.2023 were not attended to and neither was the assessee intimated about receipt of the said notices. The notices issued under section 250 of the Act dated 09.02.2023 and 22.02.2023 and letter dated 03.11.2022 were also sent cc to [contactus@balunand.com](mailto:contactus@balunand.com)'. However, the said chartered accountant firm who had filed the appeal had no contact with the assessee and was dependent on Mr. Govinda Bhandary to communicate with the assessee. Mr. Govinda Bhandary had expired on 21.10.2022 and therefore the said Chartered Accountant firm was unable to intimate the assessee about receipt of the notices dated 09.02.2023 and 22.02.2023 as well as letter dated 03.11.2022 and neither was any response filed in view of no instructions or details forthcoming from the assessee. The notices issued under section 250 of the Act dated 06.03.2023, 14.03.2023, 23.03.2023, 08.04.2023 and 02.05.2023 were sent only

to an e-mail id Varshankrishna08@gmail.com' to which the assessee does not have any access to the said e-mail id.

2.4 The Id. A.R. further submitted that the e-mail ids mentioned in the return of income filed for the AY 2016-17 were govindabhandaryassociates@gmail.com' i.e. email id of the deceased Chartered Accountant and suresh.thimmaiah96@gmail.com' is the assessee's personal e-mail id. The assessee's personal e-mail id has also been provided in the contact details page. The assessee has not received any hearing notice under section 250 of the Act in his own e-mail id nor has the assessee received any notice through post.

2.5 The Id. A.R. submitted that the learned Commissioner of Income-tax (Appeals) ought to have sent the notices issued under section 250 of the Act through speed post when the assessee's case was non-responsive and consequently the learned Commissioner of Income-tax (Appeals) ought to have given another opportunity of hearing to the assessee by sending the notices through speed post. Consequently, the order passed under section 250 of the Act dated 14.06.2023 is in violation of the principles of natural justice.

2.6 The Id. A.R. for the assessee further submitted that the learned Assessing officer erred in holding that the action of the assessee in getting the urban land converted and then developing the land into urban layout, consisting of 125 sites, is nothing but adventure in the nature of trade and does not qualify to be eligible for considering it as capital gain. The learned Assessing officer also erred in holding that the activity of the assessee clearly indicates that he had ventured into trade and consequently the benefit of exemption under section 54B claimed by the assessee is not available to him.

2.7 The ld. A.R. submitted that in present case it cannot be said that the activity undertaken by the assessee amounts to 'activity in the nature of trade'. He submitted that the learned Commissioner of Income-tax (Appeals) erred in upholding the finding of the Assessing officer and confirming the addition made by the Assessing officer without the assessee participating in the appellate proceedings. The assessee intended to produce evidences in support of the return of income filed by the assessee and since lack of opportunity the assessee could not file the details before the learned Commissioner of Income-tax (Appeals). Consequently, the order passed by the learned Commissioner of Income-tax (Appeals) is in violation of the principles of natural justice.

3. The ld. D.R. submitted that notices have been issued by NFAC to the mail address mentioned by assessee in its appeal memo.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, notices have been sent to the mail address [govindabhandaryassociates@gmail.com](mailto:govindabhandaryassociates@gmail.com). This mail ID is not related to the assessee. On the other hand, it was related to assessee's Chartered Accountant Shri Govinda Bhandary who is said to be expired on 21.10.2022. Being so, the various e-mail notices issued to the assessee have not reached to the assessee. Accordingly, no response has been given by assessee before NFAC. In our opinion, there is a good and sufficient reason in not responding before the NFAC. Accordingly, in our opinion, it is appropriate to remit the issue to the file of NFAC for de-novo consideration. It is needless to state that the fresh notice of hearing is to be given to the assessee to the e-mail ID i.e. [suresh.thimmaiah96@gmail.com](mailto:suresh.thimmaiah96@gmail.com). Since we have remitted the issue to the file of NFAC for fresh consideration, at this

we refrain from commenting on any addition sustained by the NFAC.  
Ordered accordingly.

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 9<sup>th</sup> Oct, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 9<sup>th</sup> Oct, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**