

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

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

I.T.A. No.2498/Mum/2023
(Assessment year : 2013-14)

Ranjita Rangnath Mhatre 14, Sangam Society, Ram Nagar, Troli Line,Kanjur Marg, Mumbai- 400 042 PAN : BRWPM9101N	vs	Income-tax Officer, Ward 29(3)(1) 305, C-10, Pratyaksha Kar Bhawan, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
APPELLANT		RESPONDENT

Present for the Assessee	Shri Subodh Ratnaparkhi
Present for the Department	Shri Rajesh Meshram

Date of hearing	25/10/2023
Date of pronouncement	27/10/2023

ORDER

Per Padmavathy S (AM):

This appeal is against the order of the Commissioner of Income Tax (Appeals) (CIT(A) in short) dated 27.05.2023 for assessment year 2013-14

2. The assessee raised the following grounds of appeal –

“1. The Hon. CIT(A) erred in dismissing the appeal *ex-parte*, for alleged non-compliance to appeal notices, inspite of the appellant being not aware of the notices issued and for this reason the order dismissing the appeal was not justified and may kindly be over turned and set aside.

2. The Hon. CIT (A) erred in dismissing the appeal *ex-parte*, for alleged non-compliance to hearing notices, without deciding the appeal on the merits and for this reason also the order of the Hon. CIT(A) is *bad-in-law* and required to be set aside.

3. The Hon. CIT (A) erred in upholding the addition of **Rs.14,87,298/-** made by Id AO by holding that long term capital gain of the said amount arose in the hands of the appellant, on sale of share in agricultural land bearing Gat no. 319 at Mauje Tekali-Aawas, Tal. Alibag, Dist. Raigad, not appreciating that the land sold was agricultural land and therefore not a capital asset as per exception contained in section 2(14)(iii) of the I T Act 1961 and accordingly the surplus arising on sale of such land was not liable to tax.

4. The Hon. CIT(A) erred in confirming the addition of **Rs.14,87,298/-** made by Id AO by holding that long term capital gain of the said amount arose in the hands of the appellant, on sale of share in agricultural land bearing Gat no. 319 at Mauje Tekali-Aawas, Tal. Alibag, Dist. Raigad, by adopting the deemed sale consideration of Rs.27,54,255/- as appellant's share, being the market value as per stamp valuation authorities in place of actual share of appellant in sale consideration of Rs.8,00,000/-, by relying upon the provisions of section 50C of the I.T Act 1961, which addition is not appropriate by law and by facts.

5. The Hon. CIT(A) erred in confirming the addition of **Rs.14,87,298/-** without referring the valuation of the asset transferred to a valuation officer as provided u/s 50C(2) of the I T Act 1961 but imposing the value as per stamp valuation authorities to be the deemed sale consideration. The appellant prays that the asset transferred may kindly be referred for valuation as provided u/s 50C(2) of the I T Act 1961.

6. The Hon. CIT(A) erred in confirming addition of Rs.14,87,298/- as long term capital gains on sale of agricultural land bearing Gat no. 319 at Mauje Tekali-Aawas, Tal. Alibag, Dist. Raigad, without granting deduction for indexed cost of acquisition of the said land and erroneously computing the long term capital gains.”

3. The assessee is an individual and is a housewife dependant on her son. During the year under consideration the assessee relinquished her share of 14,28% in the hereditary rights in a land inherited from her father in favour of her brother Shri Anil Krishna Kawale in lieu of which she received a sum of Rs.8,00,000

towards her share. The assessee did not file the return of income for the reason that the land sold is an agricultural land. The assessing officer issued a notice under section 148 based on the information available in the ITB portal. In response to the notice the assessee filed the return of income declaring Rs.8,00,000 as agricultural income and Rs.9,143 as interest income. The assessing officer issued notice under section 142(1) calling on the assessee to furnish bank account details and also details pertaining to purchase/sale of capital asset. The assessee furnished the documents pertaining to the property transaction. The assessing officer issued a summons under section 131 of the Income Tax Act (the Act) to Shri Anil Krishna Kawale, who, in response, submitted that the said land was purchased by his father in the year 1965 and after the demise of the father there were 9 nominees, out of whom, the assessee is one. It was further submitted that Shri Anil Krishna Kawale has paid a total sum of Rs.56,00,000 to the nominees (assessee's share being Rs.8,00,000) who relinquished their rights in the inherited property in favour of Shri Anil Krishna Kawale.

4. The assessing officer was of the opinion that the value of the asset transferred is Rs.1,92,87,500 as per the stamp duty valuation and accordingly invoked the provisions of section 50C. The assessee submitted before the assessing officer that the said land is a rural agricultural land and does not fall within the definition of capital asset under section 2(14) of the Act. The assessee prayed that the assessee be allowed exemption under section 10(37) of the Act towards the amount received as her share in the transaction i.e.Rs.8,00,000. The assessing officer held that 54% of the land is not used for agricultural purposes and therefore would fall within the definition of capital asset under section 2(14) of the Act. The assessing officer proceeded compute the capital gain in the hands of the assessee and made an addition of Rs.14,87,298 computed as under –

“Total Sales (116.3 guntha) Rs.1,92,87,500/-

Out of this Agricultural land (53.5 guntha) i.e. 46%
Land is Agricultural land

Balance 54% is to be considered as capital asset.

Share of the assessee.(14.28% Out of total sales)
On sale of entire Lnd (116.3 AAR (Guntha) Rs. 27,54,255/-

Out of 116.3 AAR (Guntha) 54% is capital asset.
i.e. 62.8 AAR (Guntha) is non-agricultural land

Hence, Sale consideration of capital asset is Rs. 14,87,298/-
(54% o Rs.27,54,255/-)
Less: Cost of acquisition

Land was purchased in 1965, hence indexed cost
Should have been taken as on 1981.

However, assessee neither provide purchase agreement nor
Provided of acquisition at Nil.

Taxable LLong Term Capital Gain Rs. Nil
Rs. 14,87,298 /-“

5. Aggrieved the assessee filed an appeal before the CIT(A). However the assessee did not appear before the CIT(A) during the appellate proceedings and therefore the CIT(A) dismissed the appeal exparte. The relevant observations from the order of the CIT(A) is extracted below –

5.1 The assessee is on appeal before this office against the order passed u/s 143(3)r.w.s147 of the Income Tax Act.

5.2 The assessee was provided multiple opportunities by this office to submit documents and make submissions in response to the appeal filed. However, the assessee has not exercised this option despite multiple reminders. The table below

Date of Notice	Compliance Date	Remarks

22.01.2021	29.01.2021	No details furnished nor any petition for adjournment was received
13.04.2023	20.04.2023	No details furnished nor any petition for adjournment was received.
22.05.2023	26.05.2023	No details furnished nor any petition for adjournment was received

The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant is not interested in prosecuting the Appeal.

5.3. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known Latin dictum, "VIGILANTIBUS ET NON DORMIENTIBUS JURA SUB VENIUNT". The conduct of the Appellant, as inferred from the aforesaid table, evidences that the Appellant fails on this principle of equity. Even the Hon'ble Courts, in various pronouncements, have frowned upon the Appellants who file appeals but thereafter do not take any further interest in prosecuting those appeals.

5.3.1. The Hon'ble Income Tax Appellate Tribunal - Kolkata in the case of Pradeep Kumar Jhawar Kolkata vs. DCIT - CC -XXI (15 March, 2016) (ITA Nos. 450/Kol/2013 forAsstt. Year: 2006-07) dismissed the appeal of the Appellant for non-prosecution.

5.3.2. The Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CWT (223ITR 480) held as under:

"If the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

5-3.3 Similarly, the Hon'ble Punjab & Haryana High Court in the case of Diwan Oil Mills vs. CIT [2008) 296 ITR 495] returned the reference unanswered since the the assessee remained absent and there was no assister.ee sssessee.

5.4 In view of the above, it is clear that the Appellant is not aggrieved with the assessment order impugned herein and is not interested in prosecuting the same. Accordingly, the additions/disallowances as challenged in the Grounds of Appeal and in the Appeal Memo are hereby confirmed.

5.5 Based on the above it appears that the assessee is not keen on pursuing the appeal. Accordingly given that this office has not received any information or document so as to make a judgment based on merits, this office is left with no option but to dismiss this appeal. Accordingly the appeal of the assessee stands dismissed.”

6. The ld AR during the course of hearing submitted that the assessee is a house wife and a senior citizen (67 years old) who is illiterate not having any technical knowledge of accessing ITB portal through which notices have been served by the CIT(A). The ld AR further submitted that the said notices were served in assessee's son / daughter in law's email ids who live in Alibagh and they are also not well educated. The ld AR therefore submitted that the assessee did not come to know of the hearing notices served and hence did not appear to represent the case. The ld AR filed an affidavit duly signed by the assessee in this regard. The ld AR also submitted that the assessing officer should have made a reference to the District Valuation Officer (DVO) and that the stamp duty value as adopted by the assessing officer cannot be considered for the purpose of making addition under section 50C. The ld AR further submitted that the cost of acquisition has been taken as NIL by the assessing officer is not correct. The ld AR prayed for remitting the issue back to the assessing officer seeking one more opportunity to represent the case properly.

7. The ld DR vehemently opposed restoring the case back to the assessing officer and submitted that in spite of several opportunities being given, the assessee did not appear before the CIT(A) and did not file any information. The ld DR further submitted that the issued of reference to DVO was not raised before the lower authorities by the assessee. Therefore the ld DR prayed that the addition be sustained.

8. We heard the parties and perused the material on record. During the year under consideration assessee has received a sum of Rs.8,00,000 being her share in the total consideration of Rs.56,00,000 towards relinquishing the hereditary rights in a property which is claimed by the assessee as rural agricultural land. The assessee did not file the return of income, but in response to notice under section 148 of the Act, the assessee filed the return in which the sum of Rs.8,00,000 was declared as agricultural income. The assessing officer invoked the provisions of section 50C for the reason that the stamp duty value of the asset was Rs. 1,92,87,500. The assessing officer held that a portion of the land i.e.54% of the land was not used for agricultural purposes and accordingly computed the proportionate capital gain in the hands of the assessee to the tune of Rs.14,87,298. We notice that before the CIT(A) there was no representation by the assessee and that the CIT(A) has passed an exparte order dismissing the appeal. The ld AR contended that the assessee being a senior citizen does not have the technical knowledge to access the ITB portal and had no knowledge of the notices which were sent to the email id of son / daughter who were also not well educated. We take into consideration the affidavit filed by the assessee in this regard. It is also contended by the ld AR that the assessing officer has adopted the stamp duty valuation without making reference to DVO. Considering the facts of the present case, in the interest of justice and fair play, we are of the view that the assessee should be given one more opportunity to represent the case before the assessing officer. Accordingly we remit the issue back to the assessing officer for a de novo consideration afresh with a direction to consider the various contentions of the assessee with regard to reference to DVO, cost of acquisition being taken at NIL etc. The assessee is directed to submit all the relevant details as may be called for

by the assessing officer and cooperate with the proceedings. It is ordered accordingly.

9. In result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 27/10/2023

Sd/-

sd/-

(ABY T VARKEY)	(MS. PADMAVATHY S).
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :27th October, 2023

Pavanan

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai