

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE JUSTICE C.V. BHADANG, HON'BLE PRESIDENT AND  
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT**

**ITA NO. 2555/MUM/2023 : A.Y : 2011-12**

Laxman Mahadev Patil  
(L/H Hemant Laxman Patil)  
Laxman Patil House, Gavanpada,  
Mulund East, Mumbai 400 081.  
**PAN : AKRPP2087M (Appellant)**

Vs. Income Tax Officer-41(2)(3),  
Mumbai. (Respondent)

**Appellant by : Shri Anant N. Pai  
Respondent by : Shri Manoj Kumar Sinha**

**Date of Hearing : 25/10/2023**

**Date of Pronouncement : 25/10/2023**

**ORDER**

**PER G.S. PANNU, VICE PRESIDENT :**

The captioned appeal filed by the assessee pertaining to Assessment Year 2011-12 is directed against an order passed by Commissioner of Income Tax (Appeals), NFAC, Delhi (in short 'the CIT(A)') dated 30.05.2023, which in turn arises out of an order passed by the Assessing Officer under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (in short 'the Act') dated 16.11.2018.

2. A perusal of the record reveals that in this case an assessment under Section 143(3) read with Section 147 of the Act was completed on 07.03.2016 at an income of Rs.50,614/-. An information was received by the Assessing

Officer that assessee had sold an inherited plot of land to M/s. Konark Realtors for a total consideration of Rs.1,25,00,000/- and the amount was distributed equally among five members, including the assessee, i.e. 1/5<sup>th</sup> share to each. The market value of the property was Rs.5,74,41,500/- and thus, it was noted that the property was sold for a consideration lesser than the market value. The subject property was referred for valuation to the Departmental Valuation Officer under Section 55A of the Act and in terms of the Valuation Report submitted thereof on 08.08.2017, the market value of the property was estimated at Rs.3,91,12,000/- and Rs.13,27,030/- as on 18.10.2010 and on 01.04.1981 respectively. Accordingly, the Assessing Officer has reassessed the income under the head 'Capital Gains' in the impugned order passed under Section 143(3) read with Section 147 of the Act on 16.11.2018 at Rs.2,96,76,817/-, and assessee being the 1/5<sup>th</sup> owner of the property, an income of Rs.59,35,363/- has been assessed in the hands of the assessee. Aggrieved with the order of the Assessing Officer, assessee preferred appeal before the CIT(A) on varied grounds, *inter-alia*, contending that the notice for reopening was issued in the name of a deceased person and hence bad in law; that notice for reopening was issued after expiry of 4 years from the end of the relevant assessment year and there being no lapse on part of assessee, the reassessment proceedings were invalid; and, that on facts, the addition was erroneous inasmuch as the 'transfer' of the plot of land in question had not taken place during the year under consideration. Thus, the assessment was assailed on facts as well as on points of law.

3. We find that the CIT(A) has not addressed any of the aforesaid points raised by the assessee, but has instead dismissed the appeal solely for the reason that assessee had not responded to the notices of hearing sent.

4. In this background, the assessee is in appeal before us contending that the CIT(A) erred in passing the order without affording sufficient opportunity of being heard; and, the objections regarding the assessment of income raised before the CIT(A) are reiterated; Such objections have already been noted by us in an earlier paragraph, and therefore are not being repeated for the sake of brevity.

5. At the time of hearing, the Learned Representative for the assessee submitted that the appellant would be satisfied if the matter is restored back to the file of CIT(A) so that the required submissions can be made on merits of the dispute. The Ld. DR appearing for the Revenue has not seriously opposed the plea of the Learned Representative for the assessee for restoration of appeal for *de novo* consideration by the CIT(A).

6. Having heard the rival parties, we are inclined to set-aside the impugned order passed by the CIT(A) and restore the matter back to his file for *de novo* adjudication as per law. Nevertheless, before parting we may observe as follows. We find that the CIT(A) has not determined the appeal of the assessee in the manner mandated by the statute. Section 250 of the Act deals with the procedure in appeal before the CIT(A) and, in particular, Sub-section (6) thereof prescribes that the order of CIT(A) disposing off the appeal shall be in writing and "*shall set the points for determination, the decision thereon and the reason for the decision*". A perusal of the impugned order by the CIT(A) clearly shows non-adherence to the mandate of Sub-section (6) of Section 250 of the Act. Ostensibly, the CIT(A) has dismissed the appeal solely on the ground of failure of assessee to appear before him. Without going into

the merit or otherwise of such non-appearance, we find that the CIT(A) ought to have set-out the dispute raised by the assessee before him, the relevant facts, and the reasons for his determination of such points. For instance, one of the fundamental point raised by the assessee was to the effect that the notice for reopening has been issued in the name of a deceased person and, therefore, the consequential proceedings are invalid. Even on the said issue, there is no speaking order by the CIT(A), which is a requirement of Section 250(6) of the Act.

7. Thus, in the interest of justice and fair play, we deem it fit and proper to set-aside the order of CIT(A) and restore the matter back to his file for adjudication in accordance with law after allowing the assessee a reasonable opportunity of being heard.

8. Resultantly, for statistical purposes, the appeal is treated as allowed.

Above decision was pronounced in the open court in the presence of both the sides at the conclusion of hearing on 25<sup>th</sup> October, 2023.

Sd/-  
(G.S. Pannu)  
VICE PRESIDENT

Sd/-  
(Justice C.V. Bhadang)  
PRESIDENT

Mumbai, Date : 25<sup>th</sup> October, 2023

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Copy to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai