

।आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

[VIRTUAL HEARING AT PUNE]

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.129/NAG/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Mohd. Shafi Naushahi, Plot No.194, Shahai Manzil, Gumgaon Road, Dongaragaon, Nagpur. PAN: ADGPN2947L	Vs	The Commissioner of Income Tax-IV, Nagpur.
Appellant/ Assessee		Respondent/Revenue

Assessee by	None
Revenue by	Shri Kailash G. Kanojiya – Sr.DR
Date of hearing	22/09/2023
Date of pronouncement	22 /11/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee against the order of
ld.Commissioner of Income Tax-IV, Nagpur dated 11.03.2014
for A.Y.2009-10 emanating from assessment order under section
143(3) of the Act, dated 29.11.2011. The grounds of appeal filed
by the Assessee are as under :

“1. The learned CIT has erred in law and in the facts and circumstances of the case in wrongly assuming jurisdiction under section 263 of the Act.

2. The learned CIT failed to appreciate that, the learned AO had examined the Assessee's claim of gain on sale of rural agricultural land of Rs. 12,50,000 being exempt from tax as per provisions of section 2(14) and the learned AO had accepted the aforesaid claim during original assessment proceedings.

3. That the learned CIT erred in giving directions u/s 263 of the Act to the learned AO, without appreciating that, the view taken by the Assessing Officer was a possible view and as such there was no legal infirmity in the assessment order and hence, was beyond the purview of section 263.

4. Without prejudice to aforesaid grounds, the learned CIT has erred in treating the exempt capital gain of Rs. 12,50,000 as "income from other sources", which is incorrect and contrary to the facts & evidences.

5. The Appellant prays leave of the Hon'ble Tribunal to add, amend, alter any of the Grounds of Appeal.”

Brief Facts of the case :

2. In this case assessee had filed Return of Income(RoI) for A.Y.2009-10 on 07.10.2009 declaring total income at Rs.1,46,570/-. Assessee is a proprietor of M/s.Unique

Computers deriving income from processing of Computer Peripherals and Computer Repairing and Job Work. The assessment order was passed on 29.11.2011 under section 143(3) by making minor disallowances of expenditures. Ld.CIT, Nagpur on perusal of the assessment record observed that assessee had credited Rs.12,50,000/- in the capital account under the head "Income from Transfer of Agricultural Land". However, the same was not offered for taxation. The ld.CIT, Nagpur issued notice under section 263 of the Act to assessee. Assessee claimed that during the year, assessee had sold agricultural land admeasuring 1.62 hrs situated at Krimiti which was purchased by assessee along with Mr.Manohar Wankhade in 2007. Assessee submitted before ld.CIT, Nagpur that since the land was Agricultural Land, capital gain on sale of land was exempt. However, ld.CIT, Nagpur observed that assessee had never filed any purchase deed for the purchase of impugned land admeasuring 1.62 hectares. Assessee's Name was not appearing in 7/12 extract of the land. As per 7/12 extract of the land, Mr.Wazare was the owner of the land. The assessee submitted that in order to avoid stamp duty charges, he along with

Mr.Wankhade decided to transfer the impugned land without first executing the purchase deed in their names. The said land was transferred on 12.06.2008 wherein assessee and Mr.Wankhade appeared as consenters as they were not registered owners of the land. Assessee received Rs.25 lakhs in cash from time to time. Ld.CIT, Nagpur held that it was admitted position by the assessee that he was not the Legal Owner of the Land. Therefore, ld.CIT, Nagpur held that the receipt of Rs.25 lakhs was not exempt as claimed by assessee and it needs to be taxed as income from other sources. Accordingly, ld.CIT, Nagpur passed the order under section 263 of the Act. Aggrieved by the order under section 263, the assessee filed appeal before this Tribunal.

Condonation of Delay :

3. There is a delay in filing appeal of 1833 days. Assessee filed condonation application along with an affidavit. The Paragraph “F” of the affidavit is reproduced as under:

“F. That during the relevant period (i.e year 2014 to present year 2019) the assessee's father had been severely ill and had been undergoing continuous treatment in hospital. The assessee had been facing Kidney related medical issues and was being treated by Dr Ravi Deshmukh, Urologist & Uro-Oncologist, Nagpur at Kidney

Centre Jasleen Hospital Nagpur on various dates during the concerned period. The assessee had to undergo various tests on frequent basis. The assessee will furnish the medical file and documents before your Honours, if required. Thus, the assessee had to look after his father's health and treatment at the hospital. The assessee was very much disturbed during the said period and could not follow-up on taxation matters. The assessee submits that, his father is still undergoing medical treatment for his ailments as on date.”

3.1 We are satisfied that there was sufficient reason for delay. Therefore, delay is condoned.

Submission of Ld.AR :

4. At the outset of hearing, no one appeared on behalf of the assessee. No adjournment letter was filed. Even on earlier occasions i.e. 18.09.2023, 24.08.2023 no one had appeared on behalf of the assessee for hearings and hearings were adjourned for non-appearance. Therefore, we are of the opinion that sufficient opportunity was granted to the assessee, but the assessee failed to avail it. Therefore, we proceeded with the hearing of Id.Departmental Representative(Id.DR) for the Revenue.

Submission of Ld DR:

5. Ld.DR relied on the order of the ld.CIT, Nagpur.

Findings and Analysis:

6. We have heard ld.DR and perused the records. It is observed that the assessee has not filed any document to prove that the assessee was Legal Owner of the Impugned Land. As per 7/12 extract, assessee is not the owner of the Impugned Land. Therefore, in these facts and circumstances of the case, we agree with the ld.CIT, Nagpur that since assessee was not the owner of the land, the income appearing in the capital account of the assessee is not on account of sale of agricultural land. The Assessing Officer (AO) has failed in carrying out any enquiry with reference to assessee's claim of exempt income of Rs.12,50,000/-. The assessee has not brought on record any document to demonstrate that AO had carried out enquiries with reference to assessee's claim of exempt income. Therefore, the AO has erred in passing the order without carrying out proper enquiries on the issue of exempt income claimed by assessee. Therefore, the assessment order is erroneous and prejudicial to the interest of the revenue. In these facts and circumstances of

the case, we uphold the order under section 263 of the Act passed by Id.CIT, Nagpur. Accordingly, grounds of appeal filed by the assessee are dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 22nd November, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd November, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.