

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI MS PADMAVATHY S, ACCOUNTANT MEMBER
ITA No. 2783/Mum/2023

(A.Y: 2009-10)

Dr.KirtiChaturbhaiPatel, 901, Suhas CHS Ltd, Gulmohar Cross Road, No.12, Juhu, Mumbai- 400049.	Vs.	ACIT-11(2), Aayakar Bhavan, M.K.Road, Mumbai-400021.
PAN/GIR No. : AGRPP9744P		
Appellant	..	Respondent

Appellant by :	Ms. Sneha More.AR
Respondent by :	Shri P.D Chougule.Sr.DR

Date of Hearing	07.12.2023
Date of Pronouncement	07.12.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

1. *That on the facts and in the circumstances of the case of the appellant and in law Id. CIT(A) has erred in re-opening the case of the appellant u/s. 147 of the Act merely on change of opinion.*

2. That on the facts and in the circumstances of the case of the appellant and in law ld. CIT(A) has erred in ignoring the revised return of income filled by the appellant for A.Y. 2009-10.

3. That on the facts and in the circumstances of the case of the appellant and in law ld. CIT(A) has failed in accepting the correct index cost of acquisition i.e. Rs.1,91,19,286/-being 50% share of the appellant.

4. That on the facts and in the circumstances of the case of the appellant and in law ld. CIT(A) has erred in ignoring the valuation report valued by a registered valuer thereby calculating the total index cost amounting to Rs.3,82,38,573/-.

5 That on the facts and in the circumstances of the case of the appellant and in law ld. CIT(A) has erred in not considering the submission dated 19.05.2023 filed along with annexures against one notice dated 06.06.2023 issued u/s.250 of the Act.

6. That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.

7. That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

8. That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y 2009-10 on 19.07.2010 disclosing a total income of Rs.2,24,29,909/-, subsequently the assessee has filed belated return of income on 12.07.2011 disclosing a total income of Rs. 2,04,29,909/-. Whereas the Assessing Officer (A.O) after recording the reasons for reopening has issued notice u/sec 148 of the Act. Subsequently the AO has issued notice u/sec 143(2) and U/sec 142(1) of the Act. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. Whereas the AO found that the assessee is a doctor by profession and has disclosed income from business & profession, capital gains and income from other sources. The AO found that the assessee has received an amount of Rs.1,50,000/- from the Escrow account with M/s Little & Company and the explanations were called for. The A.O was not satisfied with the explanations and invoked the provisions U/sec 68 of the Act and made addition of Rs.

1,50,000/- as unexplained cash credit. Further in respect of the revised computation of income filed by the assessee vide letter dated 16.08.2013, where the assessee has disclosed the capital gains based on the valuation report, but the AO was not satisfied with the explanations, as the assessee has not adopted the provisions U/sec 48 of the Act and the A.O has computed taxable capital gains of Rs.2,00,00,000/- dealt at Para 5.1 of the order and assessed the total income of Rs.2,55,79,910/- and passed the order u/sec 143(3) r.w.s 147 of the Act 30.03.2014.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on referred at Para 4 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal.

And, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 07.12.2023.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 07.12.2023

KRK, PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai