

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.350/Ind/2023
(Assessment Year: 2011-12)

Shri Mahesh Patel Village-Palia, Post-Palia, Tehsil Hatod	vs.	ITO ward 1(4) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: CYMPP 3850K		
Assessee by	Shri Mahendra Mittal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	17.01.2024	
Date of Pronouncement	17 .01.2024	

ORDER

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 16.06.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) for Assessment Year 2011-12.

2. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case the Ld. C.I.T. (Appeals) (NFAC) erred in upholding the additions of Rs. 67,26,531/- made by learned A.O. by passing of order w/s 250 after sending hearing notices on invalid email id which was not mentioned in memo of appeal.

2. *On the facts and in the circumstance of the case the Ld. C.I.T. (Appeals) (NFAC) erred in upholding the disallowance of Rs. 1,40,000/- made by learned A.O. as brokerage expenses, when the same was within the limit as prevailing in the market.*

3. *On the facts and in the circumstance of the case and in law Ld. C.I.T. (Appeals) (NFAC) not justified by upholding the action of learned A.O. by treating the market value of property as "claimed by co-owner in his return as cost of acquisition" without any basis.*

4. *On the facts and in the circumstances of the case and in law Ld. C.I.T. (Appeals) (NFAC) erred in upholding the disallowance u/s 54B made by the Ld. A.O. holding that no agricultural operations was carried out by the appellant in immediately two preceding financial year on the agricultural land sold by him to avail exemption u/s 54B of Act, when he had accepted the agricultural income declared by the appellant in his return of income filed w/ s 148.*

5. *On the facts and in the circumstances of the case and in law Ld. C.I.T. (Appeals) (NFAC) erred in upholding the action of Ld. A.O. by making disallowance w/s 54B on the basis of investment made in the name of appellant's wife to save stamp duty when the same is settled position of law that investment can be made in wife's name to allow exemption.*

6. *On the facts and in the circumstances of the case and in law the Ld. C.I.T. (Appeals) (NFAC) erred in upholding action of the Ld. A.O. in charging interest /s 234A of the Act, when the appellant has filed his return of income well in time allowed u/s 148 of the Act."*

3. At the time of hearing Ld. AR of the assessee has submitted that the CIT(A) has dismissed the appeal of the assessee for non-prosecution. He has pointed out that the notices issued by the CIT(A) were not received by the assessee as the alleged notices were issued to E-mail ID not belonging to the assessee. He has filed the details of the e-mail ID registered with the department as well as E-mail ID provided by the assessee in form 35 and even in the ITR. Thus, Ld. AR has submitted that the assessee has given his own E-mail ID "arpitpatel1485@gmail.com" whereas the notices were issued

by the CIT(A) and sent to E-mail ID “gabrielgomes20935@gmail.com”. Thus, Ld. AR has submitted that when the assessee has not received any notices issued by the CIT(A) as same were sent to a wrong E-mail ID then the impugned order passed by the CIT(A) ex-parte is liable to be set aside. He has pleaded that the matter may be remanded to the record of the CIT(A) for deciding the same fresh after giving appropriate opportunity of hearing to the assessee.

4. On the other hand, Ld. DR has not objected if matter is remanded to the CIT(A) for fresh adjudication.

5. We have considered rival submissions as well as perused the impugned order of the CIT(A). The CIT(A) has dismissed the appeal of the assessee ex-parte and given the details of the notice issued to the assessee in para 4 as under:

“4.Observation and Decision:

Notices of hearing were issued fixing dates of hearing on 21.10.2019, 25.01.2021, 11.05.2021 & 30.05.2023. There has been no compliance on the part of the appellant. Neither any request for seeking further time for furnishing written submissions nor any written submissions in support of grounds of appeal have been filed.”

5.1. Thus, four notices were issued by the CIT(A) but as per the record filed by the assessee the notices were sent to the E-mail ID “gabrielgomes20935@gmail.com” whereas the assessee has given his own E-mail ID “arpitpatel485@gmail.com”. the same E-mail ID

is registered with the department as per the PAN data, personal details filed by the assessee from the E-filing Portal of the Department. Similarly the assessee has given same E-mail ID in ITR. In form 35. E-mail ID of the assessee's counsel was given "cajkneema@yahoo.in". The notices were issued by the CIT(A) to a different E-mail ID not belonging to the assessee nor his Counsel and therefore, the impugned order passed by the CIT(A) ex-part is not sustainable. Accordingly we are set aside the impugned order of the CIT(A) and matter is remanded to the record of the CIT(A) for fresh adjudication after giving appropriate opportunity of hearing to the assessee.

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

Order pronounced in the open court after conclusion of hearing on
17.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 17.01.2024

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*