

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.1011/Bang/2023
Assessment Year : 2016-17

Santhoor Umesh Mallya Nirmala, W/o Umesh Mallya, Kadri Temple Road, Kadri Mangaluru-575 004. PAN - ACVPM 1434 F	Vs.	The Income-tax Officer, NFAC, New Delhi. / The Income-tax Officer, Circle-2(1), Mangalore.
APPELLANT		RESPONDENT

Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department
Assessee by	:	Smt. Pratibha, Advocate

Date of Hearing	:	16-01-2024
Date of Pronouncement	:	18-01-2024

ORDER

PER MADHUMITA ROY, JUDICIAL MEMBER

The appeal filed by the assessee is directed against the order dated 04/10/2023 passed by the NFAC, New Delhi arising out of

the order passed u/s 147 r.w.s 144 and 144B of the Act for the assessment year 2016-17 whereby and whereunder the addition made in respect of long term capital gain to the tune of Rs.21,80,000/- and unexplained investment u/s 69B of the Act to the tune of Rs.2,33,270/- has been upheld.

2. At the time of hearing of the instant appeal, the ld.Counsel for the assessee submitted before us that the order impugned is admittedly an ex-parte one. In fact he could not upload the documents before the ld.CIT(A) and also seeking time to file the same before us. According to the ld. Counsel for the assessee, these documents decided to be filed as additional evidences is goes to the root of the matter and consideration of those additional documents requires for proper adjudication of the involved interested in the matter.

3. On the contrary, the ld.DR relied upon the order passed by the authorities below as admittedly, the assessee did not appear before the said authorities.

4. We have heard the rival submission made by the respective authorities, we have also perused the relevant materials available on record particularly order impugned passed by the CIT(A), NFAC, New Delhi. We find that the assessee for some

reason or the other could not appear before the said authorities on notice being sent to him with a specific direction to submit documents before him too. We further find that several opportunities were also given by the ld AO to the assessee to represent its case but without any result, which ultimately lead to pass an order us/ 144 of the Act by the ld.AO. However, we find from the records that the order has been passed by the First Appellate Authority is admittedly ex-parte one without going into the merit of the matter, which needs to be considered in its proper perspective in order to prevent the miscarriage of justice as submitted by the ld.AR.

5. We also find force in the submission of the ld.AR in granting opportunity to the assessee to file the additional documents. In that view of the matter, we quash the order impugned and find it fit and proper to remit the issue to the file of ld.CIT(A) to adjudicate the same on merit. We also grant opportunity to the assessee to file sufficient additional evidences before the ld.CIT(A), which are directed to be taken up for consideration by the said authority. The ld.CIT(A) is further directed to grant an opportunity of being heard to the assessee, if so required, and to pass order upon considering the evidence on record or the evidence which the assessee may choose to file by way of additional evidences before it. We also make it clear that in the event, the assessee does not cooperate with the First Appellate

Authority, the said would be at liberty to dispose of the appeal strictly in accordance with law.

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

Order pronounced in the open court on 18th January, 2024

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(MADHUMITA ROY)
Judicial Member

Bangalore,
Dated, 18th January, 2024

/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore