

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1319/PUN/2023

निर्धारण वर्ष / Assessment Year : 2015-16

Narendra Kantilal Banthia, 168, Banthia Niwas, M.G. Road, Panvel, Dist. Raigad Maharashtra – 410206 PAN : ABJPB0827C	Vs.	ITO, Ward-1, Panvel
Appellant		Respondent

Assessee by : None
Revenue by : Shri Shri Ramnath P. Murkude

Date of hearing : 31.01.2024
Date of pronouncement : 31.01.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by assessee against the order of the CIT(A) in National Faceless Appeal Centre, Delhi ['NFAC'] dated 25.05.2023 for the assessment year 2015-16.

2. At the outset, we find that the Id.CIT(A) while passing the *ex-parte* order had not adjudicated the issues raised in appeal on merits, instead the Id.CIT(A) dismissed the appeal for want of prosecution of appeal with regard to ground Nos. 1, 3 & 4. However, with respect to ground No.2 raised before him, the Id. CIT(A) partly allowed the appeal by directing AO to give benefit of

cost of acquisition as per the provisions of section u/s.55(2)(b)(ii) of the Act. The ground Nos. 3 & 4 raised by the assessee before the Tribunal are that the lands sold were agricultural lands and therefore, not liable to any capital gain as per exceptions contained in section 2(14)(iii) of the Act. He, therefore, prayed that addition made by the AO requires to be deleted.

3. When the appeal was called on, none appeared on behalf of the assessee despite due service of notice of hearing. After hearing the Id. DR and perusing the material on record, we proceed to dispose of the appeal *ex parte* qua the assessee.

4. We find that the approach of the Id.CIT(A) is totally unreasonable and unjustified. The CIT(A) fell in serious error by not adjudicating the issues in appeal on merits. The settled positions of law mandates the CIT(A) to dispose of the appeal by adjudicating the issue raised in appeal on merits. In the present case, the CIT(A) had fell into serious error by not disposing of the appeal on merits. The findings of the CIT(A) are not based on the material on record, which means that the CIT(A) had not gone into the merits of the issue in appeal. Albeit, with respect to ground No.2 raised before the CIT(A), he allowed the benefit of cost of acquisition but did not dispose of the ground of appeal on merits

raised before him challenging the addition made by the AO under the head “capital gains”. Therefore, considering the facts in entirety, we vacate the finding of the CIT(A). In the circumstances, we remand the matter back to the file of the CIT(A) and direct to dispose of the appeals on merits in accordance with law after affording due opportunity of being heard to the appellant.

5. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced on this 31st day of January, 2024.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st January, 2024.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, ‘A’ Bench, Pune
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	31-01-2024	Sr.PS
2.	Draft placed before author	31-01-2024	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		