

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 3399/MUM/2023
Assessment Year: 2009-10

Sanjay Baban Vaity,
4/15, Vaity House, Deonar
Village, Sion Trombay Road,
Mumbai-400088.

PAN NO. ABOPV 3710 B

Appellant

Vs.

ITO, Ward 34(3)(1),
Vashi Railway Station Complex,
Vashi, Navi Mumbai-400706.

Respondent

Assessee by : Mr. Shekhar Gupta
Revenue by : Mr. Surendra Kumar Meena, Sr. DR

Date of Hearing : 05/02/2024
Date of pronouncement : 05/02/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 14.12.2022 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2009-10, raising following grounds:

1. *The learned CIT (Appeals) has erred in law and on the facts of the case in passing an ex-parte order.*
2. *The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer re-opening the case u/s. 147 of the Income Tax Act.*
3. *The learned CIT (Appeals) has erred in law and on the facts of the case in not giving a finding whether there was a transfer of capital asset as per the provisions of section 2(47)(v) since the conditions*



as envisaged in section 53A of the Transfer of Property Act were not fulfilled.

4. *The learned CIT (Appeals) has erred in law and on the facts of the case in not considering the remand report dated 24-10-2017 submitted by the assessing officer confirming that construction of the building has not yet commenced by the developer.*
5. *The learned CIT (Appeals) has erred in law and on the facts of the case in not giving the benefit of section 54 of the Income Tax Act.*
6. *The assessee craves leave to add, alter or amend the above grounds of appeal.*

2. Briefly stated, facts of the case are that the assessee filed return of income on 06.07.2009 declaring total income of Rs.1,46,041/-. Subsequently, the case of the assessee was reopened by way of invoking section 147 of the Income-tax Act, 1961 (in short 'the Act') and the reassessment was completed on 24.03.2015 wherein addition of Rs.33,63,330/- was made as short term capital gain on sale of an immovable property.

3. Before the Ld. CIT(A) though appeal was filed by the assessee however no compliance was made of various notices issued in faceless appellate proceedings and therefore, the Ld. CIT(A) passed the order ex-parte after analysis of evidence on record.

4. Aggrieved the assessee filed appeal before the Tribunal.

5. The appeal of the assessee has been found to be filed with a delay of 225 days as communicated to the assessee by the Registry vide letter dated 04.01.2024. Before us, the Ld. counsel for the assessee referred to the affidavit filed by the assessee wherein he has submitted that since impugned order of the Ld. CIT(A) was uploaded on e-portal account and was not served either physically



or by an e-mail , therefore, the assessee being unaware of the order passed, could not file the appeal on time and only came to know about the impugned order when the Assessing Officer started pursuing recovery of the outstanding demand. The Ld. counsel submitted that in identical circumstances Co-ordinate Bench of the Tribunal in the case of **Sant Kabir Mahasabha v. CIT(Exemption) ITA No. 84/CHD/2023 dated 23.08.2023** condoned the delay in filing the appeal on the plea of the assessee that order was not served in physical mode or by the e-mail as per the provisions of section 282 of the Act.

6. We have heard rival submission of the parties. We find that there is a sufficient cause for not filing the appeal by the assessee and this being a bona fide mistake, we condone the delay in filing the appeal and admit the same for adjudication. Since, the Ld. CIT(A) has passed the impugned order without taking into consideration submission of the assessee on the grounds raised ,therefore, in the interest of substantial justice, we feel appropriate to restore the appeal back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. Before us, the Ld. counsel for the assessee has given an undertaking that notices issued by the Ld. CIT(A) shall be complied by the assessee. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.



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

Order pronounced in the open Court on 05/02/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 05/02/2024

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai