

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, HON. ACCOUNTANT MEMBER
(through virtual hearing)

ITA No.57/PUN/2024
(A.Y. 2011-12)

Rajeev Devidas Nadkarni, At Galel, Post Banda, Taluka Sawantwadi, Dist.Sindhudurg, Sindhudurg, Maharashtra. PAN: AHAPN 2937 J Appellant	vs	ITO, Ward-Kudal, Kudal. Respondent
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Assessee by	:	Shri Kumar Kale, AR
Revenue by	:	Shri Ganesh B. Budruk, DR
Date of hearing	:	12/02/2024
Date of pronouncement	:	13/02/2024

ORDER

This appeal preferred by the assessee directed against the order of Commissioner of Income Tax [Appeals]-11, Delhi (for short, 'CIT(A)'), dated 26.12.2023 for A.Y.2011-12.

2. The assessee has raised the following grounds of appeal:

- "1. *On the facts and in the circumstances of the case, and also in law, the Ld. Addl/Jt. CIT(A) erred in passing ex-parte order in gross violation of the principles of natural justice and on the grounds of alleged non-prosecution. Your appellant, therefore, prays that the impugned order be set aside and the matter may be restored to the file of the Ld. Addl. Jt. CIT(A) for de novo adjudication.*
2. *On the facts and in the circumstances of the case, and in law, the proceedings initiated u/s.147 of the Act are bad in law and ab initio void. Consequently, the impugned order passed u/s. 143(3) r.w.s.147 dated 28.12.2018 is also bad in law, illegal and unsustainable in law. Your appellant, therefore, prays that aforesaid the order u/s. 143(3) r.w.s. 147 be quashed.*

3. *On the facts and in the circumstances of the case, the Ld. Addl/Jt. CIT(A) erred in confirming the addition of Rs.17,45,230/- being alleged short term capital gains of Rs.17 ,45,230 I - on sale of agricultural land. Your appellant, therefore, prays that the aforesaid addition of RS.1 7,45,230/- be deleted.*

Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary."

3. Brief facts of the case are that assessee is an individual and no return of income was filed for the A.Y. 2011-12. Subsequently, the AO had issued notice u/sec. 148 on 27/03/2018 based on the information that during the year under consideration, the assessee along with other two co-owners had sold lands for a total consideration of Rs. 70 lacs, of which assessee's share was Rs. 19 lacs. Since the assessee had not offered this income, the AO had formed the opinion that income escaped assessment of tax. Accordingly, notice u/sec. 148 was issued. In response to the notice u/sec. 148, the assessee e-filed return of income on 24/10/2018 by disclosing the total income of Rs.58,990/-. Against the said return of income, the assessment was completed by the AO vide order dated 28/12/2018 u/sec. 143(3) r.w.s. 147 of the Act rejecting the contention of the assessee that the lands sold were agricultural lands placing reliance on the decision of the Hon'ble Gujarat High Court in the case of *CIT v. Sarifabibi Mohmed Ibrahim* [1982] 136 ITR 621 (Guj.). Accordingly, the AO brought to tax the capital gains arising out of sale of land of Rs. 17,45,230/-.

3. Being aggrieved by the order of the AO, assessee filed appeal before the Id. CIT(A), who vide impugned order had dismissed the appeal for non-prosecution without going into the merits of the additions.

4. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before this Tribunal.

4.1 It is submitted that even while passing the *exparte* order, the Id.CIT(A) should have gone into the merits of the appeal, therefore, the impugned order be set aside.

4.2 On the other hand, Id. Sr.DR has no serious objection for setting aside the impugned order and to remand the matter to the Id. CIT(A) for *de novo* consideration.

5. I have heard the rival submissions and perused the material on record. The Id. CIT(A) had passed the *exparte* order without entering into the controversy whether the AO was justified in making the addition or not. It is settled principle of law that even *exparte* order should be passed based on the material on record. Therefore, the impugned order should be set aside. From para 3 of the impugned order, it is clear that the Id. CIT(A) had not entered into the merits of the addition made by the AO. The Id. CIT(A) had failed to deal with the

contention of the assessee that the lands sold were agricultural lands, as to how the ratio of the decision of the Hon'ble Gujarat High Court in *Sarifabibi Mohmed Ibrahim* (supra) is applicable to the facts of the present case. Therefore, the order of the Id. CIT(A) is set aside and remand the matter back to his file for *de novo* disposal in accordance with law after providing reasonable opportunity of being heard to the assessee.

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

Order pronounced in open Court on 13th February, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Dated : 13th February, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "SMC" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.