

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No.3499/MUM/2023
Assessment Year: 2018-19

Mr. Dinaz Firdos
Fanibanda,
503, 5th Floor,
Neefam, Almedia Park,
Hill Road,
Bandra,
Maharashtra-400 050
PAN No.AAAPF3009L

Deputy Commissioner of
Income Tax - Circle 23(1),
Vs. Matru Mandir,
Tardeo Road,
Mumbai – 400 007

Appellant

Respondent

Assessee by : Shri Dharan Gandhi, A.R.
Revenue by : Smt. Mahita Nair, Sr. DR

Date of Hearing : 19/02/2024
Date of pronouncement : 20/02/2024

ORDER

PER : OM PRAKASH KANT, AM

This appeal has been filed by the assessee against the order dated 17.08.2023 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [In short the Ld. CIT(A)] for assessment year 2018-19, raising following grounds:-

“1. The Ld. AO has erred in passing the impugned order dated 25.01.2021, in gross violation of principles of natural justice without considering the submissions filed by the Assessee.



2. *The Ld. CIT(A) has erred in passing the impugned order dated 17.08.2023, in an ex-parte manner on the ground that the Appellant did not reply to two notices issued despite the fact, that the Appellant had already filed detailed submission and filed documentary evidences as well.*

3. *The Ld. CIT(A) has erred in passing the impugned order dated 17.08.2023, in an ex-parte manner without issuing any notice of hearing either physically or in any other alternate manner as prescribed in Section 282 of the Act.*

4. *The Ld. Commissioner of Income-tax (Appeal), NFAC/ erred in upholding the action of the Ld. AO in adding a sum of Rs. 51,85,000/- as Long Term Capital Gain, instead of Agricultural Income, being exempt under section 10(1A) of the Act.*

5. *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

2. At the outset the Ld. Counsel for the assessee referred to ground No.2 & 3 of the appeal and submitted that the impugned order has been passed by the Ld. CIT(A) in *ex-parte* manner without taking into consideration submissions of the assessee and without giving any findings on the merits of the issue in dispute.

3. We have heard rival submissions of the parties and perused the relevant material on record. In paragraph 4 of impugned order, the Ld. CIT(A) has mentioned that the assessee had not filed clear and legible copy of the deeds, so before us the ld Counsel submitted that part compliance was made before the ld CIT(A). But, we find that the Ld. CIT(A) has decided the appeal *ex-parte* in view of non compliance of the notices issued. However, under section 250(6) of the Income Tax Act, 1961 (in short “the Act”), the Ld. CIT(A) is required to pass a reasoned



order on merits of the issue in dispute even without representation on behalf of the assessee. The Ld. Counsel for the assessee submitted before us that the order of Ld CIT(A) might be set-aside and matter might be restored back to him. He further submitted that the Ld. CIT(A) might be directed to serve the notice on the assessee on following email addresses which are provided in form No.36:

afanibanda@gmail.com

Mehernosh_kainaz@hotmail.com

4. In view of the facts and circumstances of the case and in the interest of the substantial justice, we feel it appropriate to set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh and pass a reasoned & speaking order after, providing adequate opportunity of being heard to the assessee. In view of the undertaking given by the Ld. Counsel for the assessee, the Ld. CIT(A) may issue the notices for hearing on the email addresses mentioned above by the Ld. Counsel .

5. The Grounds No.2 & 3 of the appeal of the assessee are accordingly allowed. The grievances raised in remaining grounds are therefore do not call for adjudication at this stage and same are also restored to the file of the Ld. CIT(A) for deciding in accordance with law.



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

Order pronounced in the open Court on 20/02/2024.

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai, Dated: 20/02/2024

Kishore, Sr. PS

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