

Damayanti Narottam Mhatre

Chinchavali Narangi, Alibag

Raigad-402201

PAN : BROPM7951E

..... अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer

Ward-3, Panvel

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Ms Suneeta Rao ['Ld. AR']

Revenue by : Mr Gaurav Singh 'Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 22/02/2024

घोषणा की तारीख / Date of Pronouncement : 22/02/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

This appeal is filed u/s 253(1)(a) of the Income Tax Act ['the Act'] by the assessee challenging the order of National Faceless Appeal Centre, Delhi ['NFAC'] DIN & Order ITBA/NFAC/S/250/2023-24/1054836158(1) dt. 03/08/2023 passed u/s 250 of the Act.

2. Briefly stated facts anent to the case are that;

2.1 The appellant assessee is an individual and non-filer. Upon the information from ITD/ITBA system that assessee has sold an immovable property for a consideration of ₹79.85 Lakhs vide registered agreement dt. 07/03/2013 duly registered with Sub Registrar, Pen (Maharashtra) wherein



the assessee's share was ₹12.25Lakhs, the Ld. AO after recording the reasons and obtaining approval from competent authority invoked his jurisdiction u/s 147 of the Act to assess the aforesaid as escaped income. In the event all notices including show-cause-notice issued to the assessee remained un-responded, the Ld. AO framed an assessment to the best of his judgement u/s 144 r.w.s. 147 of the Act and assessed the total income of the assessee @ ₹12.25Lakhs by bringing to tax assessee's share in the registered property as short term capital gain. When aforesaid addition is assailed in an appeal before first appellate authority, the Ld. NFAC accorded few opportunities of hearing vide notice dt. 02/06/2023 which was due for compliance by 09/06/2023 and dt. 13/07/2023 this was also expired without compliance on 20/07/2023. In absence of any representation or written submission, the Ld. NFAC echoed with the findings of Ld. AO and confirmed the addition *ex-parte* by relying on the catena of decision of including '*CIT Vs B.N. Bhattacharya*' reported at 118 ITR 461 (SC).

2.2 Aggrieved assessee brought up this appeal challenging the addition on violation of principle of natural justice and on merits.

3. We have heard the rival contentions, perused the material placed on record in light of rule 18 of ITAT-Rules 1963. At the outset we note that, the appellant claimed to have paid the appeal fees vide CIN 23092900175406HDFC dt. 29/09/2023 Challan No. 29387. As pointed out



by the Ld. DR that the aforestated payment is made under a minor code 400 directed against outstanding tax demand for AY 2013-14, hence present appeal suffers from 253(6) of the Act, thus liable to be dismissed *in limine*. The Ld. AR Ms Rao however solidifying the mistaken fact has produced the copy of challan dt. 22/02/2024 showcasing the payment of appeal fees vide CIN 240222200039975HDFC and the compliance of section 253(6) of the Act.

4. The record *prima-facie* reveals us that, the assessee an individual could neither attend nor could appoint proper consultant to represent her case before both the tax authorities below. Insofar as the merit of the case is concern, it appears that the assessee has received his share of ₹12.25 Lakhs in the immovable property sold @₹79.85. During the proceedings before the Ld. AO in response to queries raised, the appellant submitted that, the impugned property is an agricultural land hence receipt of his share in such agricultural land is tax taxable as it falls outside the ambit of capital asset. To support this contention the appellant filed 7/12 extract, bank statement, copy of sale deed. This submission however in view of the Ld. AO failed to prove the land to be a rural agricultural land. Consequently impugned share was treated as short term capital gain arising out of sale of immovable property. When assessee failed to represent her case in appeal with cogent evidences and submission etc., the Ld. NFAC was constrained to dismiss the appeal *ex-parte* for non-prosecution.



5. We note that, the Ld. NFAC in the absence of cogent evidential material and in the evince of restriction placed by 251(1)(a) of the Act, had to culminate the proceedings ex-parte. This adjudication culminated without touching the merits, however in our considered view is not in consonance with the provision of sub-section (6) of section 250 of the Act. For the reason, without commenting on merits of the case, we deem it fit to remand the matter back to the file of Ld. NFAC with a direction to deal therewith de-nova after according not more than three opportunities and pass a speaking order in terms of section 250(6) of the Act.

6. Resultantly, the appeal is **ALLOWED FOR STATISTICAL PURPOSE.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday 22th day of February, 2024.

-S/d-

PARTHA SARATHI CHOUDHURY
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 22th day of February, 2024.

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

1. अपीलार्थी / The Appellant.

4. The Concerned CIT (MH-India)

2. प्रत्यर्थी / The Respondent.

5. DR, ITAT, Bench 'SMC', Pune

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

3. The CIT(A)-NFAC, Delhi (India)

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.