

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 131/Hyd/2024

(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Kumar Sunil Gande, Vs. ITO, Ward-1,
5-11-14/A Nirmal,
New Bus Stand , Adilabad dist.
Nirmal-504106,
Dist Adilabad

PAN:AIEPG9414A

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Mr. S. Phanindra, AR
राजस्व द्वारा/Revenue by: Mr. SPG Mudaliar, DR

सुनवाई की तारीख/Date of hearing: 29/02/2024
घोषणा की तारीख/Pronouncement on:29/02/2024

आदेश / ORDER

Aggrieved by the order dated 20/12/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Kumar Sunil Gande ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is an Individual deriving income from running retail medical shop besides real estate business of development and sale of vacant plots. He filed his return of income on 08/12/2017 admitting an income of Rs.9,14,030/-. During the course of

assessment proceedings, learned Assessing Officer found, from the trading account, that the assessee had income from the medical shop business. He had shown Rs. 78.80 Lacs towards receipt of sale of 48 plots whereas the developmental charges were claimed at Rs. 63,07,596/-. Further it was found that the assessee made deposit of Rs. 34 Lacs in bank account with on the bank and the source was stated to be the sale consideration received in cash on the sale of the plots during the year.

3. In response to the query as to why expenses on development are required even after sale of plot, assessee submitted that the sale is on the condition of developing the plot and therefore it is duty bound to incur the expenditure and develop the plot. Learned Assessing Officer took a view that such expenses are not required and disallowed Rs.12,60,000/-. On the aspect of the deposits in the bank, learned Assessing Officer considered the cash available based on sale proceeds after reducing the expenditure claimed. Assessment under section 143(3) of the Income Tax Act, 1961 (for short "the Act") was complete by order dated 30/12/2019 determining the income at Rs.30,74,030/- by disallowing expenses from real estate business of the assessee to the tune of Rs.12,60,000/- and further treated Rs.9,00,000 as unexplained cash deposit in the bank.

4. Aggrieved by such an action of the learned Assessing Officer, assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) disposed of the appeal ex parte, stating that the assessee sought adjournment on two occasions, namely, 06/10/2023 and 18/10/2023 but failed to respond to the notice issued on 8/12/2023 fixing the date of hearing as 14/12/2023. Ld. CIT(A), therefore, concluded that the assessee is not interested in pursuing the appeal, nor does he have any reasons or proof enough to defend his case. Ld. CIT(A) dismissed the appeal observing that the learned Assessing Officer made the addition on merits considering the facts of the case and no infirmity noticed in the assessment order.

5. Assessee is, therefore, before me in this appeal contending that the notice dated 8/12/2023 was issued by way of email, and such email entered the spam and could not be noticed by the assessee and that is the reason why the assessee could not respond to the same. Ld. AR submitted that having noticed the expenses incurred towards development cost and also having perused the

date wise list of the expenses incurred under various heads, the learned Assessing Officer did not call for any material from the assessee and as a matter of fact it is only from the trading account of the assessee the learned Assessing Officer gathered so much of information. The assessee is possessing all the relevant information to satisfy the learned Assessing Officer as to the genuineness of the expenses towards development cost, but it is only because the assessee was not aware as to what sort of information that is required by the learned Assessing Officer, the assessee could not furnish such information to the learned Assessing Officer.

6. Ld. AR further submitted that since the assessee was not aware of the notice dated 08/12/2023 he could not respond to the same and he submitted that the assessee will be careful in future to verify the spam also. Learned AR submitted that even otherwise also the learned CIT(A) could have referred to the facts and dispose of the matter on merits, so as to render effective assistance to the higher appellate fora. Ld. AR prayed that in the interest of justice an opportunity may be granted to the assessee to produce all the relevant information before the learned Assessing Officer to substantiate his case justifying the development expenses and also the deposits in the bank.

7. Though Ld. DR vehemently opposed grant of an opportunity to the assessee, the fact remains that there is nothing abnormal in the plea taken by the assessee that the notice dated 08/12/2023 sent by email entered the spam box and that is the reason why the assessee had no knowledge of the same. Assessee submitted that he has been maintaining the books of accounts and for that matter in the assessment order itself the learned Assessing Officer noted that the trading account was available before him.

8. I have gone through the record in the light of the submissions made on either side. Since I do not find anything abnormality in the plea taken by the assessee that the notice dated 8/12/2023 sent by email entered the spam box and that is the reason why the assessee could not respond resulting in deciding the case ex parte, I am inclined to believe the same. Even otherwise, requirement of law under section 250 (6) of the Act is that the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for

determination, the decision thereon and the reason for the decision. Even in the absence of the assessee, it is always open for the learned CIT(A) to deal with the matter on merits instead of dismissing the same in limine.

9. Having regard to the facts and circumstances of the case, I am of the considered opinion that the impugned order does not comply with the requirement of Section 250(6) of the Act and cannot be sustained. If the request of the learned AR is granted affording an opportunity to the assessee to prosecute the appeal before the learned Assessing Officer by submitting the evidences, the highest that would happen is that a cause could be decided on merits. When the technicalities are pitted against the delivery of substantial justice, the former must give way to the later. Since the assessee wants to prove the case with reference to the documentary evidence, it would be convenient for the learned Assessing Officer to verify the same and take a fresh view.

10. With this view of the matter, I set aside the impugned order and restore the appeal to the file of the learned Assessing Officer to pass an order after affording an opportunity to the assessee of being heard and to produce all the documentary evidence at his custody. I direct the assessee to co-operate with the learned Assessing Officer in getting the matters disposed of on merits without seeking any adjournments. In the result, appeal of the assessee is treated as allowed for statistical purposes.

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

Order pronounced in the open court on this the 29th day of February, 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,

Dated: 29/02/2024.

PVV/SPS

Copy forwarded to:

1. Kumar Sunil Gande, 5-11-14/A, New Bus Stand, Nirmal-504106, Dist. Adilabad
2. ITO Ward-1 Nirmal
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE