

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA No. 3891/Mum/2023
(A.Y: 2010-11)

Deepak Majaji Bhosale, B-2006, Ekta Bhoomi Garden-III, Datta Pada Road, Borivali (E), Mumbai-400066.	Vs	ITO – 32(1)(4) Kautilya Bhavan, G Block, BKC, Bandra (E), Mumbai-400051.
PAN/GIR No. : AACPB5184C		
Appellant	..	Respondent

Assessee by :	Mrs. Tejal Kharikar.AR
Revenue by :	Shri R.R Makwana.DR

Date of Hearing	15.04.2024
Date of Pronouncement	16.04.2024

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1. On the facts and in law, the Ld. CIT(A) erred in confirming the Assessment Order passed by Ld Assessing Officer without appreciating the merits of the case.*
- 2. On the facts and in law, the LdCIT (A) erred in dismissing Appeal of the Appellant for non- prosecution. The Ld. CIT(A)*

ought to have considered merits of the case and decided the appeal on merits.

3. On the facts and in law, the Appellant requested for adjournment on 31.08.2023, which was not considered and the impugned Order under Section 250 of the Act was passed on 06.9.2023. Hence, the impugned Order is bad in law.

4. On the facts and in law, the Ld. CIT(A) passed impugned Order under Section 250 of the Act on 06.09.2023 in gross violation of principles of natural justice. Hence, the impugned Order is bad in law.

5. On the facts and in law, the Ld. Assessing Officer erred in issuing Notice under Section 148 of the Act dated 29.03.2017 in Arbitrary manner. When the mandatory condition under Section 147/148 of the Act are not met. Hence, the initiation of re assessment proceeding is bad in law.

6. On the facts and in law, the Ld. A.O. erred in complete assessment under Section 143(3) r.w.s. 147 of the Act without following procedure as laid down by the Apex Court in the case of GKN Driveshaft (India) Ltd - 259 ITR 19 (SC).

7. On the facts and in law, the Ld. A.O. erred in issuing Notice under Section 148 of the Act, without due application of mind and without making any independent enquiry. Thus, the jurisdictional requirement under Section 148 of the Act is not met and therefore, notice under Section 148 of the Act and consequent Assessment Order under Section 144B of the Act is bad in law.

8. On the Facts and in law, the Assessment Order has been passed in gross violation of directs issued by Hon'ble High Court of Delhi in SABH Infrastructure Ltd. Vs Asst. Commissioner of Income Tax 398 ITR 198 (Delhi) and Hon'ble High Court of Bombay in Tata Capital Financial Services Ltd. Vs Asst.

Commissioner of Income Tax 443 ITR 127 (Bombay). The impugned order ought to be quashed and cancelled.

9. On the facts of the case and in law, the Ld. A.O. completed the assessment proceeding without affording any opportunity to cross examining the third party, based on whose statement, the alleged addition of Rs.24,00,000/- as been made. Thus non providing of opportunity to cross examine, the third party would render the impugned assessment bad in law.

10. On the facts and in law, the reasons recorded by the Ld. A.O. do not alleged, if there was any failure on part of Assessee to disclose fully and truly act the material fact. As the Assessment has been re-opened after the expiry of 4 years form the relevant Assessment year, it was incumbent on A.O. to state if there was any failure to disclose fully and truly act the material fact as per 2nd proviso to Section 147 of the Act.

11. On the fact and in law, the sanction obtained from higher authority by Ld. A.O. under Section 151 of the Act is bad in law as the higher authority has granted the approval in mechanical manner and without application of mind to the material of placed before him. Hence, the approval granted under Section 151 of the Act is bad in law. Consequently, the Notice under Section 148 of the Act is bad in law.

12. The appellant craves, leave to add to alter, modify, revise, or delete any ground (s) in the interest of justice.

2. The brief facts of the case are that, the assessee is engaged in the business and derives income from house property, income from business and income from other sources. The assessee has filed the return of income for the A.Y 2010-11 on 14.10.2010 disclosing a total income of Rs.

9,35,110/- .There was a search and seizure action conducted on Ekta and Bhoomi Group and their associate concerns u/sec132 of the Act on 05.10.2015, in the course of search and based on the data, it was noticed that the assessee has paid an amount of Rs. 24,00,000/- in cash for the purchase of flat in the project 'Ekta Bhoomi Garden (EBG)' developed by M/s. Ekta Shakti Developers of Ekta Group and accordingly the AO has issued notice u/sec 148 of the Act. The assessee has filed a letter dated 04.04.2017 to treat the return of income filed on 14.10.2010 as compliance to notice issued u/s 148 of the Act. Subsequently notice u/sec 143(2) and u/sec 142(1) of the Act was issued and at the request of the assessee ,the reasons recorded for reopening of the assessment are provided. In compliance to notices, the Ld. AR of the assessee appeared from time to time and furnished the details. The AO has considered the facts with respect to the purchase of the flat by the assessee from Ekta Shakti Developers and the assessee could not provide explanations with sources in acquisition of flat. Therefore, the AO considering the information available on record observed that the assessee could not prove with any documentary evidence on the disputed issue and made addition of Rs. 24

lakhs u/sec69 of the Act and assessed the total income of Rs.38,61,500/- and passed the order u/sec 143(3) r.w.s 147 of the Act dated 10.11.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order

considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing fixing the dates on 29.03.2019, 11.01.2021, 31.08.2021, 13.01.2022, 17.11.2022 & 31.08.2023 referred at Page 2 Para 5 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the addition by the assessing officer and there could be various reasons for non appearance which cannot be overruled. The Ld.AR emphasized that the assessee has a good case on merits and shall substantiate with the information. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate

opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 16.04.2024.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 16.04.2024

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

ITA No. 3891/Mum/2023
Deepak Manaji Bhosale, Mumbai.

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(Asst. Registrar)
ITAT, Mumbai