

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR “SMC” BENCH :NAGPUR [VIRTUAL HEARING]
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.224/NAG./2023
Assessment Year 2014-2015

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| Shri Mahesh Ramkrishna Bhingare, 80, Vivekanand Nagar, NAGPUR – 440 015. Maharashtra PAN AFXPB1679N | vs. | The JCIT, Range-1, Income Tax Office, RTTC, BSNL Bldg., Near Balaji Mandir, Seminary Hills, NAGPUR-440006. Maharashtra. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Akshay Duragkar, Advocate |
| For Revenue : | Shri Abhay Y. Marathe, Sr. DR |

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| Date of Hearing : | 18.03.2024 |
| Date of Pronouncement : | 08.05.2024 |

ORDER

This assessee’s appeal for assessment year 2014-15, arises against the National Faceless Appeal Centre [in short the “NFAC”] Delhi’s Din and Order No. ITBA/NFAC/S/250/2023-24/1052834223(1), dated 15.05.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *“The assessee has filed return of income for the A.Y. 2014-15 on 31/03/2015 declaring total income at Rs.7,42,010/- and regular assessment u/s 143(3) has been completed on*

a total income of Rs.14,11,110/- by The Income Tax Officer ward 1(1), Nagpur, vide order dated 26/12/2016.

2. The assessee is in the business of construction and partner in various firms which are in the business of builders & developers. During the F.Y. 2013-14 the assessee has purchased two agricultural lands one at Mouja - Khapri Khurd, Tahsil - Hingna, Dist.- Nagpur for Rs.69,25,000/-, however the value of property for stamp duty purpose is Rs.70,86,000/-. So, there was a difference of Rs.1,61,000/-. The second agricultural land was purchased at Mouja- Neri (Mankar), Tahsil- Hingna, Dist. Nagpur for Rs.2,24,500/- the valuation of which was ascertained by the Valuation Officer at Rs.67,32,600/-. So, there is a difference of Rs.5,08,100/-. The A.O. has considered the difference amount of Rs.1,61,000/- & Rs.5,08,100/- as income of the assessee as income from other sources u/s.56(2)(vii) of the Income Tax Act, 1961.
3. The assessee during course of scrutiny assessment has submitted the copy of sale deeds of the two agricultural lands, however the A.O. has not accepted the contention of the assessee that the said properties are agricultural lands and not a capital asset and the provisions of section 56(2)(vii) of the Income Tax Act, 1961 are not applicable in the said transactions and treated the same as income of the assessee.

4. *Being aggrieved assessee prefers this appeal on the following amongst other ground.*

1. *The order passed by Hon'ble CIT is illegal, invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT (Appeals) ought to have deleted the sum of Rs.6,69,100/- added to the Total Income of the assessee.*
3. *That the Appellant craves leave to alter, amend, vary or add any other grounds of appeal.”*

3. I now come to the assessee's sole substantive grievance seeking to reverse both the learned lower authorities action making twin additions u/sec.56(2)(vii) of the Act of Rs.1,61,000/- and Rs.5,08,100/-; totalling to Rs.6,69,100/- involving as many capital assets purchased in the relevant previous year; in the course of assessment dated 26.12.2016 as upheld in the NFAC's lower appellate order.

4. It transpires during the course of hearing that the assessee had purchased his former capital asset at Mouza-Khapa (Khurd), Tehsil-Hingana, Dist. Nagpur for Rs.69.25 lakhs followed by stamp valuation thereof of Rs.70.86 lakhs resulting in the differential addition amount of Rs.1,61,000/-. His latter capital asset is at Mouza-Neri (Mankar), Tehsil-Hingana, Dist.-Nagpur had been purchased for

Rs.62,24,500/- having stamp valuation of Rs.82.44 lakhs as reduced to Rs.67,32,600/- by the DVO's report.

5. Learned DR failed to rebut the clinching fact that the foregoing differential amount nowhere 10% of the actual sale price as per sec.56(2)(vii)(b) 3rd proviso adopting the tolerance margin given in sec.50C(1) 3rd proviso *mutatis mutandis*. Mr. Marathe vehemently argued that the tolerance margin of 10% in sec.50C(1) 3rd proviso substituting 5% by the Finance Act, 2020 is applicable w.e.f. 01.04.2021 whereas the impugned assessment year herein is 2014-2015. I find no merit in the Revenue's instant arguments in light of C. Maria Fernandes vs. ITO [2021] 187 ITD 738 (Mum.) holding the foregoing tolerance margin as carrying retrospective effect. I delete the impugned addition made u/sec.56(2)(vii) in very terms since falling within the statutory tolerance margin of 10%. Ordered accordingly.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 08.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 08th May, 2024

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | The Pr. CIT, Nagpur concerned |
| 4. | D.R. ITAT, "SMC" Bench, Nagpur. |
| 5. | Guard File. |

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.