

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.513/PUN/2024
निर्धारण वर्ष / Assessment Year : 2010-11

Krishan Kumar Tarachand, Flat No.4, Anupam Apartments, NDA Pashan Road, Bavdhan Khurd, Pune- 411021 PAN : ABUPD4503C	Vs.	ITO (IT), Ward-2, Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Manoj Tripathi

Date of hearing : 29.04.2024
Date of pronouncement : 10.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 09.07.2023 passed by Ld CIT(A)/NFAC for the assessment year 2010-11.

2. The appellant raised the following grounds of appeal :-

- "1. (a) The Ld. National Faceless Appeal Centre (NFAC) erred in law and in facts in dismissing the appeal filed against penalty order u/s. 271(1)(c) of Income Tax Act, 1961 dated 25.06.2018 merely on the premise that the appeal was filed belatedly and without providing reasonable opportunity of being heard.
- (b) The Ld. NFAC erred in law in dismissing the appeal filed against penalty order u/s. 271(1)(c) of Income Tax Act, 1961 dated 25.06.2018 levying a penalty of Rs.6,09,760/- without

appreciating the fact that appellant, vide Ld. NFAC's order dated 09.07.2023 had already received full relief in quantum appeal which was the sole basis for levying penalty u/s. 271(1)(c) of Income Tax Act, 1961.

2. *Each of the above grounds are independent & without prejudice to each other.*
3. *The appellant craves leaves to add, amend, alter, or delete any or all ground of appeal."*

3. Briefly, the facts of the case are that the appellant assessee is an individual. Being NON Resident & no taxable income, No regular Return of Income under the provisions of section 139 of the IT Act for the assessment year 2010-11 was filed. However, on receipt of the information that the appellant assessee had sold a property located at Flat No.1004, 10th Floor, Anupum Apartments, NDA Pashan Road, Bhavdhan Kurd, Pune for a consideration of Rs.31,20,000/- during the previous year relevant to the assessment year under consideration, a notice u/s 148 of the IT Act was issued by the Assessing Officer, after recording reasons. In response to notice u/s 148, no return of income was filed by the appellant. Further, notices u/s 142(1) was issued on 06.10.2017 and 15.12.2017, but the assessee failed to comply with the said notices issued u/s 142(1) of the IT Act. Based on the information, the assessment was completed by the Assessing Officer u/s 144 r.w.s. 147 of the IT Act on 22.12.2017 determining total income of Rs.31,20,000/- under the head "Long Term Capital Gains", on the

ground that the appellant assessee had sold an immovable property for a sale consideration of Rs.31,20,000/- which resulted in taxable income under the head “Long Term Capital Gains”. The Assessing Officer also initiated penalty u/s 271(1)(c) of the Act for concealment of income. Subsequently vide order dated 25-06-2018 penalty u/s 271(1)(c) of the IT Act of Rs.6,09,760/- was imposed by the AO. The assessee preferred appeals against the quantum addition as well as against the penalty order.

4. Subsequently, vide order dated 09-07-2023 LD CIT(A)/NFAC deleted the quantum addition by holding that the appellant assessee had purchased the said property vide registered agreement dated 07.05.2009 instead of sale of the said property & therefore there was no income to be assessed under the head “Long Term Capital Gain”.

5. Later vide order dated 08-02-2024 LD CIT(A)/NFAC dismissed the appeal of the assessee & consequently confirmed the penalty of Rs.6,09,760/- imposed by the AO.

6. Being aggrieved with the above said order dated 08.02.2024 of ld. CIT(A)/NFAC, the assessee is in appeal before this Tribunal.

7. When the present appeal was called for hearing, none appeared on behalf of the appellant assessee despite due service of notice of hearing. Therefore, we proceed to decide the appeal on

the basis of the material available on record & after hearing the ld. DR.

8. We have heard ld. DR and perused the material available on record. We find that the quantum appeal in which the penalty u/s 271(1)(c) of the IT Act was levied, was allowed vide order dated 09-07-2023 by LD CIT(A)/NFAC. Therefore, in the light of order dated 09-07-2023 passed by LD CIT(A)/NFAC, we are of the considered opinion, the matter requires remand to Assessing Officer in view of provisions of section 275(1A) of the IT Act.

9. In the result, the appeal filed by the appellant assessee is allowed.

Order pronounced in the open Court on 10th day of May, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th May, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.