

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.432/Mum/2024
(Assessment Year : 2016-17)**

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| Indira Pradeep Vardavat 203/204, 2 nd Floor Varda Building Shivaji Path Cross Road Chendani, Thane- 400 601 | Vs. | ACIT, Circle 1 A Wing 6 th Floor Ashar IT Park Road No.16Z, Wagle Indl. Estate Thane-400 604 |
| PAN/GIR No.ABYPV8238N | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|-------------------------|
| Assessee by | Shri Subodh Ratnaparkhi |
| Revenue by | Shri H.M. Bhatt |
| Date of Hearing | 08/05/2024 |
| Date of Pronouncement | 10/05/2024 |
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आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 16/01/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2016-17.

2. The assessee before us has raised following grounds:-

"1. The Hon. CIT (A), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the appeal exparte, for alleged non-compliance to appeal notices, when in reality, written submission was already filed on 04.10.2019 before the Hon. CIT(A) 1, Thane and the appeal was physically heard on

04.10.2019 & 29.11.2019 respectively, by the Hon. CIT(A) 1, Thane and therefore the order dismissing the appeal for non attendance is not justified and may kindly be quashed/set aside.

2. The Hon. CIT(A), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the appeal ex-parte on 16.01.2024, for alleged non-compliance to on-line appeal notices issued on 19.01.2021 and 15.09.2021 respectively, during prevalence of COVID-19 Pandemic and inspite of the appellant being not aware of the notices issued online and for this reason the appeal order was not justified and may kindly be over turned and set aside.

3. The Hon. CIT (A) erred in dismissing the appeal ex-parte, for alleged non-compliance to hearing notices, without deciding the appeal on the merits and for this reason also the order of the Hon. CIT(A) is bad-in-law and required to be set aside.

4. The Hon. CIT(A) erred in upholding addition of Rs.1,31,47,383/- made by ld AO as share of long term capital gain arising on retirement of the appellant from the partnership firm, M/s. Parmar & Associates, holding the share of revaluation gain in respect of shop at Thane to be liable for tax, not appreciating that the appellant had only retired from the partnership firm M/s. Parmar & Associates and therefore the addition on account of revaluation by the partnership firm was not justified in her hands. The addition of Rs. 1,31,47,383/- may kindly be deleted.

5. Without prejudice, the Hon. CIT(A) erred in upholding addition of Rs.1,31,47,383/- made by ld AO as appellant's share of capital gains arising on revaluation of Shop premises owned by the partnership firm, M/s. Parmar & Associates at Thane, without granting appropriate deduction for indexed cost of acquisition of such premises and therefore the long term capital gains determined in the hands of the appellant is factually erroneous.

6. The Hon. CIT(A) erred in upholding the computation of capital gains made by ld AO arising on transfer of flat no.901, Florica, Cosmos Orchid, Thane as short term capital gain at Rs.46,73,610/-, as against long term capital gains offered to

tax by the appellant, not appreciating the fact that period of holding for the purposes of section 48 of the IT Act, 1961 ought to reckoned from the date of allotment of the said flat as against date of registered purchase agreement considered by the Id AO. 6.

7. The Hon. CIT(A) erred in denying exemption claimed u/s 54 of the IT Act, 1961 amounting to Rs.39,97,234/- against the long term capital gains arising on sale of flat no.901, Florica, Cosmos Orchid, Thane.

8. The Hon. CIT(A) erred in also upholding the alternate argument of the Id.AO that the alleged gains of Rs.46,73,610/- from sale of residential flat no. 901, Florica, Cosmos Orchid, Thane should be brought to tax as business income in place of capital gains, which action being not appropriate by facts and in law, should not be upheld.

3. Before us Id. Counsel submitted that the Id. CIT(A) has passed an exparte order without deciding the issue on merits. He pointed out that here in this case, appeal was filed before the Id. CIT(A) on 21/01/2019 and thereafter, physical hearing took place on various occasions and assessee has filed all the details and submissions before the Id. CIT(A) and hearing was concluded. However, no order was passed. In the meantime the appeal was transferred to National Faceless Appeal Centre (NFAC) and from the order it came to the notice of the assessee that two notices were sent in the year 2021, i.e., on 19/01/2021 and 15/09/2021 during the Covid period and assessee was not aware of any such notices sent through e-mail. Assessee was under a bonafide belief that matter has already got concluded. Now after 2021, order has been passed by Id. CIT(A) in year 2024, holding that none appeared on behalf of the assessee and has dismissed assessee's appeal

for want of prosecution. Thus, he submitted that matter should be restored back to the file of the ld. CIT(A).

4. The ld. DR also admitted that matter should be restored back to the file of the ld. CIT(A).

5. After considering the aforesaid facts, we see that there has been latches on the part of the department that once the appeal has been heard and matter has been transferred to NFAC, then earlier submissions and record should have been taken into record instead of deciding the appeal on want of prosecution. Accordingly, in the interest of justice matter is restored back to the file of the ld. CIT(A) with a direction that same should be decided within six months from the date of receipt of the order, as already substantial time has been lapsed and appeal pertains to A.Y.2016-17 under regular assessment.

5. The ld. CIT(A) should also give proper opportunity of hearing to the assessee and assessee should also ensure to comply with the notices. Accordingly, appeal of the assessee is allowed for statistical purposes.

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

Order pronounced on 10th May, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 10/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai