

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.4550/MUM/2023
Assessment Year 2016-17**

Sampatraj Santokchand Mehta,
105, Krishna Complex,
Navallipeer Road,
Kalyan West – 421 302.
PAN:ADHPM-5469-P

- Appellant

Vs.

The Deputy Commissioner of Income Tax,
Circle-1, Kalyan,
1st Floor, Mohan Plaza, Wayle Nagar,
Khadakpada, Kalyan (West) -421 302

- Respondent-

Appellant by : Shri Piyush Chhajed
Respondent by : Shri Suresh D. Gaikwad, Sr.AR

Date of Hearing : 14/05/2024
Date of Pronouncement : 14/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 19/10/2023 passed by Id. CIT(A),NFAC, Delhi and it relates to the assessment year 2016-17.

2. At the outset, we notice that the Id.CIT(A) was constrained to pass an ex-parte order since the assessee did not appear before him. The Id.A.R of the assessee submitted that assessee had, in fact, sought adjournment on three occasions, but failed to file an adjournment letter on the last occasion, Hence, the Ld CIT(A) proceeded to dispose of the appeal ex-parte. The Id.A.R submitted that the issue under consideration relates to determination of capital gains arising from sale of rights in a residential flat. The Id.A.R

submitted that the assessee had taken the date of allotment as the date of acquisition, while the Assessing Officer has taken the date of Agreement for sale as the date of acquisition. The ld.A.R submitted that this issue is squarely covered by the decision rendered by the Hon'ble Bombay High Court in the case of PCIT vs. Vembur Vaidyanathan (2019) 101 taxmann.com 436, wherein it has been held that the date of allotment should be taken as date of acquisition. Accordingly, he prayed that this issue may be decided by the Tribunal, instead of remitting the matter back to the file of Ld CIT(A)/AO.

3. On the contrary, ld. Departmental Representative submitted that the assessee did not appear before ld.CIT(A) and hence, he was constrained to pass the order ex-parte. Further, the ld.CIT(A) has not expressed any view on the merits of the issues. Accordingly, he submitted that the issues contested in this appeal may be restored to the file of ld.CIT(A).

4. In the rejoinder, the ld.A.R submitted that, since the contentions of the assessee are supported by the decision rendered by Hon'ble Bombay High Court(supra), the issues may be restored to the file of Assessing Officer in order to avoid multiplicity of proceedings.

5. We have heard the rival contentions and perused the record. Since, the ld.CIT(A) has passed the order ex-parte, the issue contested in the present appeal is required to be restored to his file in the normal course. However, since the assessee claims that the issue is covered by the decision rendered by Hon'ble Bombay High Court(supra), we are of the view that all the issues contested in this appeal may be restored to the file of Assessing Officer, so that he can examine the facts of the present case in the light of decision rendered by Hon'ble Bombay High Court in the case referred supra and take appropriate decision in accordance with law. Accordingly, we set aside the order passed by Ld CIT(A) and restore all the issues to the file of Assessing Officer for examining them afresh in the

light of decision rendered by Hon'ble Bombay High Court(supra). After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law. We also direct the assessee to fully co-operate with the assessing officer for expeditious completion of assessment proceedings.

6. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 14th May, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Mumbai, Date : 14th May, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "G" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. Baskaran)
Accountant Member

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai