

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

BEFORE SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.663/PUN/2024
निर्धारण वर्ष / Assessment Year : 2014-15

Vasudev Abhyankar, Jambhulpada, Raigad- 410205. PAN : ACYPA1203H	Yashwant Sudhagad	Vs.	ITO, Ward-4, Panvel.
Appellant			Respondent

Assessee by : None
Revenue by : Shri Sourabh Nayak
Date of hearing : 30.05.2024
Date of pronouncement : 31.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 03.02.2024 passed by Ld CIT(A)/NFAC for the assessment year 2014-15.

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

- "1. The Learned CIT(A)-NFAC erred on facts and in law in passing an ex-parte order without considering the matter on its merits. He failed to consider the submissions made by assessee manually before the Hon'ble CIT(A)-2, Thane during the physical hearings before him on various dates. As such, the impugned order has been passed without considering the matter on its merits.*
- 2. The Learned CIT(A) erred on facts and in law in making addition of Rs.9,96,500 on account of purchase of land for a consideration less than that of the value determined by the stamp*

duty valuation authority by invoking the provision of section 56(2)(vii)(b)(ii) of the Act without appreciating the facts as well as the submissions made in this behalf.

3. *The Learned CIT(A) erred on facts and in law in making an addition of Rs.85,57,000 u/s 43CA of the Act relating to the sale of agricultural land that was part of stock in trade of assessee. He failed to appreciate the fact that the land that was sold was an agricultural land for which the stamp valuation authority has erroneously adopted the valuation applicable for a non-agricultural land and therefore the same cannot be used for the purpose of section 43CA of the Act.*
4. *Without prejudice to Ground No.3 above, the Learned CIT(A) as well as the learned AO erred on facts and in law in not making a reference to the DVO for the purpose of valuation of the land sold as provided for u/s 43CA(2) of the Act, neither suo-moto nor even after the specific request from the assessee in this regard.*
5. *The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”*

3. The facts, in brief, are that the assessee is an individual engaged in the business of real estate agent and reseller of firewood, furnished his return of income on 29.11.2014 declaring total income of Rs.6,90,919/-. The case was selected under CASS and notice u/s 143(2) was issued on 10.09.2014. During the course of assessment proceedings, the AO found that the assessee has purchased three different lands below the fair market value determined by the stamp duty authority for the purpose of registration. It was further found by the AO that the assessee also sold six properties during the course of business wherein the consideration was less than the fair market value determined by the stamp duty authority for the purpose of registration. After considering the reply of the assessee,

the AO added Rs.9,96,500/- to the income of the assessee being the difference of stamp duty value for the purpose of registration and the actual consideration paid for purchase of immovable property to the income of the assessee u/s 56(2)(vii)(b) of the IT Act. The AO also added Rs.85,57,000/- to the income of the assessee being the difference of stamp duty value for the purpose of registration and the consideration received for the sale of properties during the course of business u/s 43CA of the IT Act. Vide order dated 29.09.2016 the AO completed the assessment on a total income of Rs.1,02,44,419/-.

4. Being aggrieved with the above assessment order, an appeal was preferred before Id. CIT(A)/NFAC. Since the assessee remained absent before Id. CIT(A)/NFAC, the appeal of the assessee was dismissed for want of prosecution.

5. Being aggrieved with the above *ex-parte* first appellate order, the assessee is in appeal before this Tribunal.

6. When the appeal was called for hearing, none appeared on behalf of the assessee nor any application for adjournment was filed. Therefore, we proceed to decide the appeal on the basis of material available on record and after hearing the Id. DR.

7. Id. DR supported the order passed by Id. CIT(A)/NFAC and requested to confirm the same.

8. We have heard ld. DR and perused the material available on record. We find that ld. CIT(A)/NFAC has passed the impugned order in contravention of section 250(6) of the IT Act. The ld. CIT(A)/NFAC dismissed the appeal of the assessee for want of prosecution and only because the assessee could not appear before him the appeal was dismissed without deciding the grounds of appeal. We further find that originally the appeal was filed before ld. CIT(A)-2, Thane and the assessee also appeared before ld. CIT(A)-2, Thane during the course of physical hearing on various dates. But when the appeal was transferred before ld. CIT(A)/NFAC, he did not considered this fact and also did not mentioned that how many opportunities were provided by him to the assessee. It is further seen that in the appellate order it was mentioned that multiple opportunities were provided to the assessee, but it appears that opportunities were given only by ld. CIT(A)-2, Thane and the assessee also appeared before him [ld. CIT(A)-2, Thane] and when the appeal got transferred before ld. CIT(A)/NFAC, he himself did not provide proper opportunity to the assessee. We therefore find force in the grounds of appeal of the assessee and without going into merits of the case deem it proper to restore the matter back to the file of the ld. CIT(A)/NFAC for providing reasonable opportunity of hearing to the assessee.

Therefore, we set-a-side the impugned order passed by Id. CIT(A)/NFAC for adjudicating the appeal afresh on merits of the case after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notice issued by the Id. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing which Id. CIT(A)/NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly.

9. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open Court on 31st day of May, 2024.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st 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, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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