

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

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.308/PUN/2024
निर्धारण वर्ष / Assessment Year: 2020-21

Sandip Madhukar Mhatre, House No.1193, Mulekhand, At Post Uran Telipada, Dist. Raigad- 400702. PAN : AEMPM9754P	Vs.	Assessing Officer, Assessment Unit, I.T. Department, Panvel.
Appellant		Respondent

Assessee by : Shri Subodh Ratnaparkhi
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 27.05.2024
Date of pronouncement : 05.06.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 12.01.2024 passed by LD CIT(A)/NFAC, Delhi for the assessment year 2020-21.

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

"1. The Hon. CIT(A) erred in dismissing the appeal ex-parte, for alleged non-compliance to appeal notices, inspite of the appellant being not aware of the notices issued and for this reason the order dismissing the appeal was not justified and may kindly be over turned and set aside.

2. *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.*

3. *The Hon. CIT(A) erred in upholding addition of Rs.6,39,18,952/- made by ld AO, by bringing to tax in the hands of the appellant, other co-owners share of interest received on delayed payment of enhanced compensation on acquisition of agricultural land, from Special Land Acquisition Office Metro Centre-1, Uran, not appreciating that appellant had only 25% share in such interest income. The addition of Rs.6,39,18,952/- in the hands of the appellant is unjustified and is required to be deleted.*

4. *The Hon. CIT(A) erred in upholding addition of Rs.6,39,18,952/- made by ld AO, by disallowing deduction claimed u/s 57, being the amount of interest received on delayed payment of enhanced compensation by Special Land Acquisition Office Metro Centre-1, Uran, not appreciating that even otherwise, the entire interest u/s 28 of the Land Acquisition Act, 1884 bore the character of enhanced compensation on acquisition of agricultural land and was therefore exempt from tax and the addition was not justified even on this account.*

5. *The appellant craves leave to add, alter, amend and/or vary the grounds of appeal at any time before the decision of the appeal.”*

3. The facts, in brief, are that the assessee is an individual, filed his return of income on 30.03.2021 declaring income of Rs.2,15,65,670/- & claiming refund of Rs.84,98,700/- for assessment year 2020-21. The case of the assessee was selected for scrutiny for verification of genuineness of expenses claimed u/s 57 of the IT Act & also for the reason that there was difference in the income disclosed in the return & appearing in Form 26AS. Accordingly, the AO issued notices u/s 143(2) & 142(1) of the IT

Act on 29-06-2021 & 24-11-2021 respectively. After considering the reply/submission of the assessee, the AO disallowed deduction of Rs.6,39,18,952 claimed u/s 57 of the IT Act, under the head “Income from other sources” & passed the assessment order determining total income of the assessee at Rs.8,54,84,622/-

4. Being aggrieved with the above action of the Assessing Officer, an appeal was preferred before Id. CIT(A)/NFAC. Since the assessee remained absent, Id. CIT(A)/NFAC dismissed the appeal of the assessee vide order dated 12.01.2024 by observing as under :-

“4.4. The Hon’ble Bombay High Court in the case of M/s. Chemipol V/s. Union of India in Excise Appeal No.62 of 2009 has held that in the cases where the assessee does not want to pursue the appeal, appellant authorities have inherent power to dismiss the appeal for non-prosecution. Similar view has been expressed in the case of Late Tukojirao Holkar (MP), 223 ITR 440. Likewise, in the case of CIT Vs. Multiplan India (P) Ltd. (38 ITD 320) (Del) similar view had been taken. I am, therefore, convinced that the assessee is not interested in prosecuting the appeal. I, therefore, dismiss the appeal of the assessee as un-admitted.”

5. Being aggrieved with the decision of the Id. CIT(A)/NFAC, the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted before us that LD CIT(A)/NFAC was not justified in deciding the appeal *ex-parte*, &

not deciding the appeal on merits of the case. It was also submitted before us that in the light of section 250(6) of the IT Act, LD CIT(A)/NFAC was duty bound to decide the grounds of appeal by a speaking order. It was submitted before the bench that with the help of an affidavit the assessee made it clear that since the notices issued by the office of LD CIT(A)/NFAC went to Spam Folder in its mail, the assessee could not file submissions before the ld. CIT(A)/NFAC. Under these circumstances & facts of the case it was requested before the bench to set-a-side the *ex-parte* order passed by LD CIT(A)/NFAC being bad in law & further requested to direct LD CIT(A)/NFAC to re-adjudicate the appeal on merits as per facts & law, after providing reasonable opportunity of hearing to the assessee.

7. Ld. DR, on the other hand, supported the order of the ld. CIT(A)/NFAC.

8. We have heard the counsels from both the sides and perused the material available on record. It is an admitted fact that despite number of opportunities granted by the Ld. CIT(A)/NFAC, the assessee did not make any submission for which the Ld. CIT(A)/NFAC dismissed the appeal for want of prosecution. It is

the submission of the Ld. Counsel for the assessee that due to the mails being transferred to Spam Folder, the assessee could not see the notices and therefore, could not make any submissions before the Ld. CIT(A)/NFAC. It is also his submission that the Ld. CIT(A)/NFAC has not decided the issue on merits but has simply dismissed the appeal for want of prosecution, which is against the provisions of section 250(6) of the Act. We find force in the above arguments of the Ld. Counsel for the assessee. It is an admitted fact that Ld. CIT(A)/NFAC has simply dismissed the appeal for want of prosecution & has not decided the grounds of appeal ignoring the provisions of section 250(6) of the IT Act. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of Ld. CIT(A)/NFAC to decide the issue as per facts and law with a direction to grant reasonable opportunity of hearing to the assessee to substantiate his case by filing the requisite details. The assessee is also hereby directed to respond to the notice issued by Ld. CIT(A)/NFAC and submit the requisite details on the appointed date without seeking any adjournment under any pretext, failing

which the 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 filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05th June, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th June, 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.