

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

**BEFORE: SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 692/MUM/2024
(Assessment Year : 2017-18)**

Premprakash Gangaprasad Saraogi 1201 Shyadri Neelkanth Velly, Rajawadi, 7 th road Ghatkopar (E), Mumbai-400077	Vs.	Assistant Commissioner of Income Tax Circle 34(2), Room No.: 820, 8 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051
PAN/GIR No. ANXPS2364R		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri H.M. Bhatt (SR. DR.)
Date of Hearing	03/06/2024
Date of Pronouncement	20/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 20.12.2023 passed in Appeal no. CIT(A) 46,

Mumbai/10638/2019–20 by the Ld. Commissioner of Income–tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the “CIT(A)”] u/s. 250 of the Income–tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment year [A.Y.] 2017–18, wherein learned CIT(A) has dismissed assessee's appeal upholding the addition of Rs. 69,82,933/- as long term capital gain in the total income of the assessee made by the Assessing Officer vide assessment order dated the 29.12.2019.

2. The brief facts related to the appeal state the assessee e–filed the return of income on 30.05.2018 declaring the total income of Rs. 8,39,300/- the return was processed u/s. 143(1) of the Act. Thereafter the case was selected for scrutiny. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Assessee submitted the details called by the Assessing Officer. The Assessing Officer found that the assessee entered into sale transactions of immovable properties, out of which, disputed one, situated at Daman, SY No. 46/5 measuring 9551 sq.m for a consideration of Rs. 92,49,485/- after deducting the indexation cost of acquisition of Rs. 22,66,542/-. The long term capital gain on the

aforesaid property came to be Rs. 69,82,943/-. The same was added by Assessing Officer in the total income of the assessee. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who dismissed the appeal for non prosecution.

3. The appellant assessee has approached this tribunal on the following grounds:

“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an adding of Rs.69,82,933/- as alleged Long Term capital gains earned on sale of property, without considering the facts & circumstances of the case.....”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
5. We have perused the records and heard learned representatives for both the parties.
6. Learned representative for the assessee has submitted that the said addition of LTCG is contrary to the facts of the case. Further submitted that the impugned order has been passed ex-parte without affording sufficient opportunities of hearing to assessee. Prayed to set aside impugned ex-parte order.
7. Learned DR has supported the impugned order.

8. Considering the submissions made before us, we find that learned CIT(A) has dismissed assessee's appeal merely on the ground of not being pursued by the assessee, whereas learned CIT(A) was expected to state the points for determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act. We are conscious of the fact, that the assessee sought adjournments on three occasions before the first appellate authority and such prayer on all three occasions was acceded to by the learned CIT(A). The assessee would have been more disciplined and punctual during the proceedings before learned CIT(A). However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any

observations on the merits of the case. The appeal is thus liable to be allowed.

9. In the result, the appeal is allowed in above terms. Impugned order dated 20.12.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 20.06.2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai; Dated 20/06/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
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