

।आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES “B” :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.461/PUN/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Santosh Krushna Ghule, 165/9, Sahu Nagar, Godolo, Satara – 415001. Maharashtra. PAN: AYOPG3325J	V s	The Income Tax Officer, Ward-5, Satara.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Prateek Jha – AR
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	19/06/2024
Date of pronouncement	20/06/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee against the order of Ld.Commissioner of Income Tax(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 dated 13.01.2023. The Assessee has raised the following grounds of appeal :

“1. On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in dismissing the appeal of the assessee without granting him reasonable opportunity of being heard and the impugned order deserves to be set aside.

2. On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had assessed an amount of Rs.53,24,743/- as Long Term Capital Gains without

appreciating that the capital gains has not arisen in the A Y 2013-14 and the addition was unwarranted.

3. *On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in ignoring the fact that the Ld AO had brought to tax the entire sale proceeds as capital gains without appreciating that the assessee had not received the consideration during the A Y 2013-14 and the amount of Rs. 1,66,667/- received during the year was not liable to tax because it was lower than the taxable limit.*

4. *On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in not appreciating that as per the Development Agreement 38% of the land was not transferred but was retained by the assessee and his family members along with constructed area.*

5. *On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in not appreciating that the assessee was to receive constructed area of 16,250 square feet as consideration and the same was receivable in future. The Ld CIT(A) ignored the settled law that the assessee caused improvement upon the property and retained substantial portion thereof for self use. The working of capital gains was incorrect.*

6. *On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in not considering the fact that as per section 45(5A) the capital gains would be chargeable to income tax in the previous year in which the construction of the project was completed and certificate of completion of whole or part of the project was issued by the competent authority.*

7. *On the facts and circumstances of the case and in law the Ld CIT(A), NFAC, erred in not appreciating that the assessee was entitled to exemption under section 54F of the IT Act.*

8. *The above grounds of appeal are without prejudice to one another.*

9. *The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings.*

10. *The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

Submission of Id.Authorised Representative(ld.AR) :

2. The Id.Authorised Representative(ld.AR) for the Assessee submitted that assessee’s appeal was dismissed by the Id.CIT(A) without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Hence, Id.AR requested for one more opportunity of being heard to the assessee.

Submission of Id.Departmental Representative(ld.DR) :

3. The Id.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)[NFAC].

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed from the order of the Id.CIT(A)[NFAC] that the Id.CIT(A)[NFAC] did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The Id.CIT(A) has not adjudicated grounds raised by the assessee on merits.

4.2 The Hon'ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) as under :

Quote, "8.From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the

assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

5. Thus, the Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution.

6. In view of the above, the order of the ld.CIT(A)[NFAC] is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A) shall provide opportunity of hearing to the assessee.

7. Accordingly, appeal of the assessee in ITA No.461/PUN/2024 is allowed for statistical purpose.

Order pronounced in the open Court on 20th June, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

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

पुणे / Pune; दिनांक / Dated : 20th June, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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