

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

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 269/MUM/2024
(Assessment Year : 2012-13)**

Shri Rajesh Govind Rao Shop no.7, Khokar Compound, Opp: Parvana Apartment, Ram Nagar Road, Saibaba Nagar, Boivali(W), Mumbai-400092	Vs.	Income Tax Officer, 42(1)(4), Kautilya Bhavan, Mumbai-400051
PAN/GIR No. ADOPR4581N		
(Appellant)	..	(Respondent)

Assessee by	Shri. Haridas Bhat
Revenue by	Smt. Mahita Nair (SR. DR.)
Date of Hearing	29/05/2024
Date of Pronouncement	21/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 31.07.2023 passed in Appeal no. CIT(A)44, Mumbai/10623/2019-20 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as "CIT(A)"] u/s. 250

of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2012-13, wherein learned CIT(A) dismissed assessee's appeal, confirming assessment order dated 03.12.2019.

2. The brief facts related to the appeal state that assessee filed original return of income for A.Y.2012-13 on 25.02.2013 declaring his total income of Rs. 2,72,110/-. On the basis of the information received from Director Of Income Tax (Intelligence And Criminal Investigation) Mumbai dated 30.03.2015, revealing that the assessee has entered into a transaction for sale of immovable property, wherein it was noticed that the transaction amount (agreement value) was Rs. 60,00,000/- and the transaction value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer was Rs. 2,49,81,500/- the difference was thus worked out as Rs. 1,89,81,500/- and the same was added in the income of the assessee. On verification of the return, it was found that the assessee did not disclose the said transaction entered into by him during the financial year 2011-12. After taking approval for reopening the assessment for A.Y. 2012-13, notice u/s. 148 of the Act was issued and served upon the assessee. However assessee did not file any return of income required to be filed in response to the notice u/s. 148 of the Act. Various notices u/s. 142(1) were also issued and served upon the assessee, requiring him to submit the details/documents etc. Assessee also did not respond to the show cause notice issued for best judgement

assessment u/s. 144 of the Act in respect of aforesaid unexplained cash credit u/s.68 of the Act. Being aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who passed ex-parte order and dismissed the appeal.

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

“GROUND I

On the facts and circumstances of the case, and in Law, CIT(A) erred in confirming an order u/s 144 of the Act passed by the Income Tax Officer 32(1)(6), Mumbai (The A.O.) citing non attendance, ignoring the submissions made during the manual hearing, and also ignoring the additional evidence filed under Rule 46A of the Act before the CIT(A) during physical hearing, which is bad at law.

The Appellant did not receive any notices from NFAC, and no physical notices were sent and thus the order passed without giving proper opportunity to the appellant is bad at law

GROUND II (without prejudice to ground I)

On the facts and circumstances of the case, and in Law, CIT(A) erred in confirming an order u/s 144 of the Act passed by the Income Tax Officer 32(1)(6), Mumbai (The A.O.) in making addition of Rs.1,89,81,500/- being income from other sources u/s 68, ignoring the submission by the appellant that:-

- a) The assessee's family has sold the property at the prevailing market rate:*
- b) Stamp duty valuation as per Ready reckoner rate is not commensurate with the value of the land due to the fact that it was a stressed property.*
- c) The assessee request for valuation to be done by DVO.*

Therefore Appellant prays that addition of Rs. 1,89,81,500/- u/s 50C being the difference between stamp duty value and sale consideration may please be deleted.

GROUND III (without prejudice to ground I and II)

On the facts and circumstances of the case, and in Law, CIT(A) erred in confirming an order u/s 144 of the Act passed by the Income Tax Officer 32(1)(6), Mumbai (The A.O.) erred making addition of Rs. 1,89,81,500/- u/s 50C of the Act, ignoring the submission by the appellant that:-

The assessee jointly holds the property with 42 others, other than the assessee, Thus assessee's share is only 2.32% share (1/43rd part) of the plot of land sold. Accordingly, if any addition to be made must be restricted to 2.32% of the difference in the Stamp Duty valuation and sale consideration of the land which comes to Rs 4,41,430/-only.....”

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 appeal is time barred by 112 days as it was filed on 19.01.2024 against the impugned order dated 31.07.2023. It is further submitted that assessee has filed an affidavit explaining the delay, that the assessee was informed that remand report will be sought from the Assessing Officer. The COVID-19 pandemic also spread during the period. The e-mail ID of the assessee's proprietary business was also closed due to pandemic. Assessee could not receive further information but through his chartered accountant on 12.01.2024. Learned representative for the assessee has further submitted that learned CIT(A) has passed ex-parte order without affording opportunity of hearing to the assessee hence prayed that the impugned order be set aside.
7. Learned DR has opposed for the condonation of delay and supported the impugned order.
8. It is true that part of duration before and after assessment order dated 03.12.2019, the global pandemic COVID-19 was spread. In the interest of justice and fair play, it deems sufficient cause to condone delay in filing this appeal. We, accordingly condone the delay of 112 days in filing the appeal.
9. Considering the submissions made before us, we find that learned CIT(A) has mentioned in the impugned order that the assessee did not respond despite notices issued to him for hearings on 03.03.2020, 14.01.2021, 12.09.2022 and

27.07.2023. It was observed by learned CIT(A) that since the appellant has not furnished any documentary evidence in support of the grounds the appeal was dismissed. Learned CIT(A) was required 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. 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 circumstances. 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 liable to be allowed accordingly.

10. In the result, the appeal is allowed in above terms. Impugned order dated 31.07.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 21.06.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai; Dated 21/06/2024
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