

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.453/KOL/2024
Assessment Year: 2020-21**

Sanjay Kumar Singh 579, Purbalok, E.M. Bye Pass, Kalikapur, Mukundapur, Kolkata-700099. (PAN: ALXPS1254N)	Vs	Assessing Officer, National e- Assessment Centre, Delhi
(Appellant)		(Respondent)

Present for:

Appellant by : Shri P. K. Ray, Advocate, Shri S. N. Patra & Shri
Sayantan Patra, ARs

Respondent by : Shri B. K. Singh, Addl. CIT

Date of Hearing : 11.06.2024

Date of Pronouncement : 21.06.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)" passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2020-21 vide Appeal No. ITBA/NFAC/S/250/2023-24/1059406472(1) dated 05.01.2024.

2. Grounds of appeal raised by the assessee are reproduced as under:

"1. That, the Ld. Commissioner of Income Tax (Appeals) erred in not appreciating the submission as abstracted by him in his appeal order therefore, inter alia erred in confirming the addition of the appeal order and therefore, the addition confirmed may please be deleted.

2. That, the Ld. Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs.49,00,000/- in respect of short-term Capital Gain as information gathered from system of Income Tax Portal, it has not applied to the facts as the Appellant is a developer for constructing House Building under Business and Profession of the Appellant which has been disclosed before the Ld. Assessing Office during assessment proceeding.

3. That, the Ld. Commissioner of Income Tax (Appeals) as well as the Ld. Assessing Officer erred is not appreciating the facts that the amounting to Rs.1,46,23,369/- treated as income under section 56(2)(x)(b) of The Income Tax Act, 1961 as information gathered from system of Income Tax Portal and also submission of the Appellant which has not applied to the facts as the Appellant is a developer for constructing House Building as the Income under Business and Profession of the Appellant which has been also disclosed before the Ld. Assessing Office during assessment proceeding.

4. That, the Ld. Commissioner of Income Tax (Appeals) erred in law in dismissing Grounds nos. from 1 to 20 of the appeal.

The aforesaid grounds are without prejudice to each other and the appellant craves leave to add/delete/alter and/or amend any of grounds as aforesaid as and when necessary.”

3. Ground Nos. 1 and 4 are general in nature and do not require any adjudication.

4. Ground no. 2 relates to the Ld. CIT(A) confirming the addition on account of short term capital gain amounting to Rs.49,00,000/-.

4.1. Brief facts of the case are that the assessee is an individual engaged in the business of development and construction of flats and building. The assessee filed his return of income on 09.01.2021 declaring total income of Rs.5,02,890/-. Thereafter, the case was selected for limited scrutiny through CASS for clarification on the issue of investment in immovable property and capital gains/income on sale of the property. The statement of facts as extracted from Form No. 35 filed before the Ld. CIT(A) are as under:

“The assessee is an individual engaged in the business of development and construction of flats and building. In the course of his business the assessee frequently enters into agreement for joint Development of property and also gets power of attorney registered in his name. For the year 2019-20 he has submitted his return of income showing total income amounting to Rs. 5,02,890/- vide acknowledgement no. 157477100090121 dated 09.01.2021. On 13th September 2019 of the year 2019-20 assessee has entered into one

Joint Development Agreement with Smt Sefali Majhi PAN CODPM0165H2, Tilak Majhi PAN FOUPM8222R, Shiva Majhi PAN FOUPM8236K for development of total 8 Cottahs 2 chittaks land situated at 3712 Nayabad, P.S. Purba Jadavpur, Kolkata 700099 along with 100 Sq. ft. structure on the said land. The stamp duty value of such Joint Development Agreement has been determined at Rs.1,46,53,372/- plus Rs. 30,000/-. This development agreement has been entered for construction of new building on a land with some temporary structure. The agreement so referred has been entered into normal course of business and there is no question of capital gain since there is no transfer of right is attached with the said agreement.

On 16.01.2020 the Assessee has entered into another Joint Development Agreement with one Sri Ashim Kumar Ray Pan: ADEPR3070Q for development of one 3 Katha Land situated at 3206, Nayabad, Near Nayabad Main Road, Kolkata 700099 along with 200 sq. ft. structure on the said land. The stamp duty value of such Joint Development Agreement has been determined at Rs. 59,99,999/- plus Rs. 60,000/-. The agreement so referred has been entered into normal course of business and there is no question of capital gain since there is no transfer of right is attached with the said agreement. This development agreement has been entered for construction of new building on a land with some temporary structure.

In both the case your assessee would not be liable to pay any tax on the transaction reported any would only be liable to pay tax only on the completion of construction and on the profit of business of construction of the said project. The yearly profit on the said project would be calculated on yearly basis and assessee would be liable for tax on the income from the said project.

The Ld. AO not having proper knowledge about the procedure of construction business and how the profit arise on the construction business has concluded with consideration that the information gathered through departmental system that stamp duty value of Joint Development Agreement is the sales consideration and imposed tax thereon in an unjustified manner.

The Ld. A.O. also have retrieved information from 26AS that another property transaction of Rs. 49,00,000/- which has no reality as no Such agreement has been entered into by the assessee. It could be seen in the 26AS that there is eight times booking of the same SFT012 Purchase or sell of Immovable Property Transaction of Rs. 24,50,000/- and out of which 6 times of the same has been reversed. All the transactions recorded in 26AS is in the category of 0 (Payment details of TDS or TCS deposited in bank by deductor have matched with details mentioned in the TDS or TCS statement but the amount is over claimed in the statement. Final F Credit will be reflected only when deductor reduces claimed amount in the statement or makes additional payment for excess amount claimed in the statement. All these transactions reported are not in the category of F (Final). But the AO did not consider this and passed his order in an unjustified manner. That your appellant is not frequent user of email and he is not well aware about the income tax matter. The notices seeking clarification was issued during period of Covid Pandemic and your assessee could not discuss the matter with any person with knowledge of income tax. He also did not see all the notices issued by the income tax department as during the said period his business was totally stopped, his office was closes, he did not have any internet access and at last he was mentally so unstable that he could not concentrate on any letters, Notices received either through email or SMS. He once or twice referred about incidence

to his tax practitioners but the said practitioners could not do any significant help in the absence of any documents. Therefore in the absence of obtaining any proper information from the assessee and without understanding the actual condition during the period of pandemic the AO has just relied on the information received through ITBA and assessee has not got any option to furnish any documents. It was surprised to note in the period of Pandemic where everyone surviving for life and the Assessing Officer was busy in collecting tax. In the order instances of notices issued was given but AO did not know why the response could not be given. The Assessing officer passed his order determining total taxable income amounting to Rs. 2,00,26,259/- in which addition has been made amounting to Rs. 1,95,23,369/- and tax determined there is Rs.94,76,465/-.

The Assessing Officer would have tried to contact with the assessee before imposing such huge amount of tax which is just not only absolutely impossible for assessee to pay but also create immense mental pressure causing the assessee to suffer from mental stress and could not be able to do any business to survive. But without giving any opportunity of hearing the tax has been imposed by the Ld. AO in an unjustified manner. Therefore, being aggrieved by the order of the assessment unit of the Income Tax Department your appellant has preferred an appeal before your honour adjudication and submits the grounds as aforestated.”

4.2. The Ld. AO in the course of the scrutiny issued notice u/s. 142(1) dated 01.11.2021 to the assessee requiring him to file details as per the questionnaire. A reminder notice was subsequently issued on 18.11.2021 requiring the assessee to file the details and documents. Subsequently, another notice u/s. 142(1) dated 10.12.2021 was issued in response to which the assessee filed submission dated 24.01.2022. He stated that he is a developer of residential and commercial flats or buildings and runs business in the name of RIA Construction and all the buildings sold were stock for the said business and were not treated as immovable property. However, the Ld. AO was not satisfied with the response and has observed in the assessment order that the assessee had not furnished the details of properties purchased and sold during the year under consideration along with other details as called for. Since various statutory notices issued and served upon the assessee u/s. 142(1) of the Act were not complied with, a final show cause notice dated 09.09.2022 was issued and another letter dated 16.09.2022 was issued to the assessee in respect of not responding to the notices issued

u/s. 142(1) of the Act. The assessee filed a letter dated 22.09.2022 in which he disagreed with the subject mentioned in the notice and stated that he needed to check his records further and then only he would be able to give the response. Since assessment was getting barred by limitation on 30.09.2022 another show cause notice dated 21.09.2022 was issued requiring why adjusted amount for sale of properties as appearing in Form No. 26AS retrieved from TRACES, which comes to Rs. 49,00,000/- should not be treated as sale consideration and in the absence of any supporting documents, the purchase price should not be treated as Nil assuming ancestral property and, therefore, why a sum of Rs. 49,00,000/- should not be treated as capital gains for the year under consideration and added to the income. The Ld. AO noticed that the assessee had filed only Balance Sheet and P&L Account along with the schedule of fixed asset as on 31.03.2020 in which there appears no land and since the requirement of land is essential for construction of a building, hence the claim of the assessee that he is in the business of real estate development was liable to be rejected. The information as appearing on the ITBA portal was verified in which the stamp value for the two properties was shown as under:

S. No.	Description of the property	Stamp value	Transaction amount	Diff. in stamp duty
1.	District: South 24 Pargnas, P.S. Purba Jadabpur Corporation: Kolkata Municipal Corporation, Road Nayabad premises No. 3206, Ward No. 109	Rs.59,99,999/-	Rs. 2/-	Rs.59,99,997
2.	District: South 24 Pargnas, P.S. Purba Jadabpur Corporation: Kolkata Municipal Corporation, Road Nayabad premises No. 3712, Ward No. 109	Rs.1,46,23,372	Rs. 3/-	Rs.1,46,23,369

5. The assessee was also required to show cause as to why a sum of Rs.2,06,23,366/- being the difference between the valuation for the purpose of stamp duty and the transaction amount should not be treated as income from other sources as per the provisions of section 56(2)(x)(b) and added to the income of AY 2020-21. Since no reply was filed, therefore, a sum of Rs. 49,00,000/- was added on account of capital gains. As regards income from other sources, a sum of Rs.1,46,23,369/- was also added u/s. 56(2)(x)(b) of the Act. Before the Ld. CIT(A) no compliance was made despite repeated opportunities being provided and the Ld. CIT(A) relying upon the decision in the case of B. N. Bhattacharjee & Anr. 118 ITR 461 (SC), Estate of Tukojirao Holkar Vs. CWT 223 ITR 480 (MP) and CIT Vs. Multiplan India P. Ltd. 38 ITD 320 (Del) dismissed the appeal of the assessee as unadmitted. Further, there was delay in filing the appeal and since in view of the Ld. CIT(A) the delay was not bona fide and no sufficient cause was shown by the assessee, therefore, the request for condonation of delay was also rejected and the appeal was held to be not maintainable u/s. 249(2) of the Act.

6. Before us, it is reiterated that the assessee is a developer and the order of the Ld. CIT(A) is ex parte. The assessee also filed a paper book, however, the following documents were not filed before the Ld. AO or even before the Ld. CIT(A):

- i) Deed of conveyance on 07.08.2019,
- ii) Development Power of Attorney on 13.09.2019,
- iii) Agreement for Development on 13.09.2019,
- iv) Development Power of Attorney on 16.01.2020 and
- v) Agreement for Development on 16.01.2020.

7. It was requested to admit the additional documents as they are relevant for adjudication of claim of the assessee that he was a developer and, therefore, was not liable for any capital gains or addition

under the head income from other sources. It is apparent from the statement of facts filed in Form No. 35 that the assessee had entered into a development agreement in respect of property for which joint development agreement and power of attorney etc. were filed. Regarding delay in filing the appeal and condonation of delay, the assessee mentioned in column 15 of Form No. 35 as under:

“That your appellant is not well aware of the internet system and access to his email in an infrequent manner. The order dated 28/09/2022 passed by the Income Tax Assessment Unit, Central Processing Centre could not viewed by the assessee in time to file the appeal. He has got the only when he has received the order in physical mode on 27.02.2023. He is surprised to such order as during the period under assessment the appellant did a small amount of business and surprised to note that development agreement as reported in the ITBA has been considered as sale of immovable property and therefore decided to file appeal before this forum for adjudication. Since the appellant has received order late and could not file the appeal within specified time limit hence this has been preyed to condone the delay occurred in filing the appeal.”

8. Since the documents filed were not available before the Ld. AO who has gone by the details of information available in the ITBA portal in which transactions relating to premises no. 3206 and 3712 were noted and since the AO received the agreement for development for the property at premises no. 3206, Ward No. 109 in response to the notice issued u/s. 133(6) but could not obtain the same for the other property for the reason that no e-mail address was linked to the PAN of the seller party nor the assessee filed any submission, therefore, for premises no. 3702, Ward No. 109 the difference in stamp duty and the transaction amount of Rs.1,46,23,369/- only was added as income from other sources. As regards the capital gains of Rs.49,00,000/- computed by the ld. AO, the adjusted amount as sale proceeds of properties was appearing in Form No. 26AS retrieved from TRACES which comes to Rs. 49,00,000/- and was added as short term capital gains during the year under consideration. However, the details of the property are not mentioned in the assessment order. It is also pertinent to mention here that in respect of the property for which Ld. AO received the

development agreement, no addition u/s. 56(2)(x)(b) was made while the addition was made in respect of other property for which no response was received, therefore, the claim of the assessee that he is a real estate developer gets buttressed by the receipt of the joint development agreement in response to the notice u/s. 133(6) issued by the Ld. AO.

9. The Ld. AR requested that the matter may kindly be set aside to the Ld. CIT(A) for adjudication on merits as for the reasons mentioned, the required evidence could not be filed before him. Prima facie, the assessee has evidence in support of his claim, however, for deciding the matter on merits, it would be fair both to the assessee and as well as the Ld. AO that the matter is set aside to the Ld. CIT(A) with the direction to the assessee that the agreements filed in the course of the appeal before us are produced before the Ld. CIT(A) who, may call for the remand report of the AO under rule 46A of the I. T. Rules, 1962, and, thereafter, decide the appeal on merit as sub-section (6) of section 250 requires that while deciding the appeal, the Ld. CIT(A) should set the points for determination, the decision thereon and the reason for the decision, which in the absence of the required evidence, could not be done. Hence, all the grounds of appeal are allowed for statistical purposes and the order of the Ld. CIT(A) is restored back to him for deciding the appeal afresh in accordance with law. The assessee is also directed not to seek any unnecessary adjournment and to file the required evidence before the Ld. CIT(A) as and when called for.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2024.
Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Rakesh Mishra)
Accountant Member

JD, Sr. P.S.

Dated: 21st June, 2024

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata