

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4301/Mum/2023
(A.Y. 2014-15)**

Kurla Moonrock CHS 823 New Hall Road Kurla West, Mumbai- 400070	Vs.	ITO 14(2)(2) Room No. 453 Aaykar Bhavan. M.K. Road Maharashtra – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAECK2430P		
Appellant	..	Respondent

Appellant by :	Sameer G. Dalal
Respondent by :	P. D. Chougule

Date of Hearing	25.04.2024
Date of Pronouncement	20.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1.1 The National Faceless Appeal Center, Delhi [the NFAC] erred in dismissing the appeal of the Appellant in limine as not having been admitted under section 249 (4) of the Income Tax Act, 1961 (the Act”).
- 1.2 While doing so, the NFAC erred in not granting adequate, proper and effective opportunity of being heard to the Appellant.
- 1.3 It is submitted that, in the fact and circumstances of the case, and in law, the provisions of section 249(4) of the Act were not applicable in Appellant's case

WITHOUT PREJUDICE TO THE ABOVE:

2. REASSESSMENT:

The learned Income tax Officer-14 (2) (2), Mumbai ('the Id. A.O.') erred in initiating reassessment proceedings and framed assessment of the Appellant by invoking the provisions of Section 147 read with section 148 of the Act.

WITHOUT FURTHER PREJUDICE TO THE ABOVE:

3. BEST JUDGMENT ASSESSMENT U/S. 144 OF THE ACT:

3.1 *The Id. A.O. erred in framing the best judgment assessment by invoking the provisions of section 144 of the Act.*

3.2 *While doing so, the Id. A.O. failed to appreciate that:*

a. the necessary conditions for invoking the provisions of section 144 of the Act were not fulfilled;

b. no sufficient and effective opportunity was provided to the Appellant at the assessment stage; and in any case, that the Appellant was prevented by the reasons beyond its control to represent its case properly and fully before the Id. A.O.

WITHOUT FURTHER PREJUDICE TO THE ABOVE:

4. ADDITION OF Rs.4,71,62,400/-:

4.1 *The Id. A.O. erred in making the addition of Rs. 4, 71, 62, 400/- invoking the provisions of section 50 C of the Act.*

4.2 *The Id. A.O. failed to appreciate that the income of Rs. 4,71,62,400/- was not assessable in the hands of the Appellant.*

4.3 *The Id. A.O. erred in assessing the Appellant as a Company not registered with the Registrar of Companies. While doing so, the Id A.O. failed to appreciate that the Appellant was a Cooperative Housing Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960.*

4.4 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

5. LIBERTY:

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing."

2. Fact in brief is that in this case assessment u/s 144 r.w.s 147 of the Act was finalised on 09.12.2019. In the assessment order the assessing officer reported that the assessee was mandatorily liable to file return of income electronically for assessment year 2014-15 and the

name of the assessee company was appearing in the list of Non-filers Monitoring System (NMS) of the Department which revealed that assessee had not filed their return of income for the year under consideration. The assessing officer further noticed that assessee was having taxable income by way of sale of immovable property amounting to Rs.4,71,62,400/-. Therefore, case of the assessee was reopened by issuing of notice u/s 148 of the Act dated 26.03.2019. The assessing officer had also issued various notices u/s 142(1) of the Act but no compliance was made from the side of the assessee. Therefore, the AO has obtained information from the sub-registrar office Kurla, Mumbai showing that development agreement was entered between the assessee company and M/s Jaycee Homes Ltd. on 14.10.2019 and 11.11.2019. The assessing officer issued notice u/s 133(6) of the Act to M/s Jaycee Homes Ltd. but no response was received. The assessee has also not made any response to the show cause notice issued by the assessing officer asking the assessee to explain why the aforesaid amount of Rs.4,71,62,400/- not be added to the total income as unexplained income. Since, no compliance was made therefore, the AO has treated the whole amount of Rs.4,71,62,400/- of the sale of immovable property as unexplained income and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee failed to remove the deficiency in the appeal filed.

4. During the course of appellate proceedings before us the ld. Counsel submitted that notice u/s 148 of the Act was not served on the assessee and all the notices issued u/s 142(1) of the Act were also returned back by the postal authority including final show cause notice issued on 30.11.2019. The ld. Counsel submitted that since no notice was served on the assessee, there was no response on behalf of the assessee during the reassessment proceedings in response to the

notices issued by the assessing officer. The ld. Counsel further submitted that assessee has not transferred or sold the premises but the agreement was entered only for reconstruction/redevelopment of the assessee society. Regarding non-compliance before the NFAC to the notices issued on various dates the assessee submitted that it had provided email address of its consultant Mr. Imtiyaz Ahmed who was looking after and handling the statutory compliance of the assessee society and he was aged about 75 years therefore he could not keep track of the notices because of inexperience in the new technology introduced during the year under consideration. Therefore, the ld. Counsel submitted that notices sent on his email ID remained to be responded and requested that the appeal of the assessee should be adjudicated on merit at the level of the ld. CIT(A) after providing adequate opportunity to the assessee.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the fact as elaborated above the ld. CIT(A) has not adjudicated the appeal of the assessee on merit and the appeal was dismissed on the ground that assessee has not made compliance to remove the deficiency in the appeal filed by the assessee. The assessee has not made compliance because of inability of their old aged counsel to keep track on the notices sent to the assessee on his email address as discussed above in this order. Therefore, during the course of appellate proceedings before the ld. CIT(A) the tax consultant of the assessee could not response to the notices sent on his email id. Looking to the aforesaid facts and circumstances we consider that it is appropriate to restore this case to the file of the ld. CIT(A) for deciding on merit as contemplate in the provision of Sec.250(6) of the Act after

providing adequate opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20.06.2024

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 20.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.