

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 479/PAT/2022
Assessment Year: 2019-2020**

***Ravi Bhushan Verma,..... Appellant
Professor Colony, BRTS,
Begusarai-851117, Bihar
[PAN: ACHPV3706B]***

-Vs.-

***CPC, Bangaluru,.....Respondent
Karnataka-560500***

Appearances by:

*Shri A.K. Rastogi, Advocate, appeared on behalf of the
assessee*

*Shri Sushil Kumar Mishra, JCIT, D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing : May 06, 2024

Date of pronouncing the order : June 25, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 17th December, 2021 passed for A.Y. 2019-20.

2. The Registry has pointed out that the appeal is time barred by 171 days. However, it emerges out that major part of the delay pertains to COVID period. The Hon'ble Supreme Court has condoned the delay upto the month of May, 2022 and thereafter 60 days will be available to the assessee for the purpose of filing the appeal. It also emerges out that the impugned order of the Id. CIT(Appeals) is an *ex-parte* order and the finding of Id. CIT(Appeals) is available in two paragraphs, which reads as under:-

“4. CIT’s Decision: Since all the grounds of appeal pertains to the single issue of Long term capital gain, all the grounds of appeal are clubbed together for the sake of convenience and disposed off as under:

4.1. In this case, the appellant submitted that during the A.Y.2019-20, the appellant had sold his ancestral property along with his four brothers/cousins/nephew and the total consideration for the whole of the property was Rs.66,60,000/- out of which the share of the appellant was 1 /4th which came to Rs.16,65,000/-. The appellant filed his return of income on 22.07.2019 disclosing the money received by him and paid the tax due thereupon. But, while filing the return of income, the appellant mentioned in column B(1)(a)(ii) of Schedule CG, the appellant had mentioned the total value of stamp duty of Rs.66,60,000/- instead of his share of Rs.16,65,000/-. The CPC, while processing the return by taking into account this value of Rs.66,60,000/ and determined the total income at Rs.73,46,170/- and tax payable at Rs.12,51,663/-.

4.2 The CPC is competent to make the adjustment based on the ITR and it appears that the appellant has filled in wrong figures. It is only the appellant who is solely responsible for the same. Moreover, even in the appellate proceedings, it has to be seen as to whether there is a prima facie mistake apparent from records and no further document can be admitted at this stage. It is also pertinent to mention here that this appeal is against the intimation u/s 143(1) and not an order u/s 143(3). Therefore, it is held that the CPC has rightly made the adjustment based on

the ITR. Therefore, the adjustment made of Rs.12,51,663/- is upheld and the grounds of appeal are dismissed. .

3. A perusal of the above finding would indicate that the ld. CIT(Appeals) has not decided the issue according to the material available, rather legalize the injustice on account of certain technicalities. Therefore, we condone the delay and proceed to decide the appeal on merit.

4. With the assistance of ld. Representatives, we have gone through the record carefully. The assessee has pleaded before the ld. CIT(Appeals) that in the house property sold by the family, his share was only 1/4th, whereas by mistake in the return, he has disclosed the total value of the sale consideration received by the whole family. The ld. CIT(Appeals) dismissed the appeal by observing that CPC under section 143(1) can make the additions on the basis of wrong committed by the assessee. It is pertinent to note that the ld. 1st Appellate Authority failed to discharge its duties as an Appellate Authority. The ld. CIT(Appeals) has been empowered to consider the issue on merit and then thereafter decide taxability of an assessee. In the present case also, instead of dismissing the appeal on account of technicalities, the ld. CIT(Appeals) ought to have given an opportunity to the assessee to rectify the error committed in the copy of the return. She ought to have called for the sale deed of the property and also other records demonstrating the

ownership of the assessee to the extent of 1/4th, thereafter taxable income in the hands of the assessee was required to be determined. By not following this procedure, ld. CIT(Appeals) has committed an error. Therefore, we set aside the impugned order and restore the issue to the file of ld. CIT(Appeals). The ld. CIT(Appeals) is directed to first give an opportunity for leading additional evidence to the assessee, call for the sale deed and other relevant documents demonstrating that the assessee has only 1/4th share. Thereafter any capital gain, if arisen, in the hands of the assessee is to be decided.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 25.06.2024.

Sd/-	Sd/-
(Manish Borad)	(Rajpal Yadav)
Accountant Member	Vice-President
Kolkata, the 25th day of June, 2024	

*Copies to :(1) Ravi Bhushan Verma,
Professor Colony, BRTS,
Begusarai-851117, Bihar*

*(2) CPC, Bangaluru,
Karnataka-560500*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) Commissioner of Income Tax- ;

(5) *The Departmental Representative*

(6) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.