

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI  
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.61/MUM/2024  
Assessment Year: 2011-12**

Rajesh Trymbak Patankar, Legal Heir of Late Trymbak Shridhar Patankar 101, Grace B, Vasant Oscar, LBS Marg,, Mulund (W), Mumbai – 400 080 (PAN :AAEPP6610M)	Vs.	Income Tax Officer 34(3)(4), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Ashish A. Thakurdesai, CA  
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 11.06.2024  
Date of Pronouncement : 24.06.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057796212(1), dated 08.11.2023 passed against the assessment order by Income Tax Officer, Ward 34(3)(4), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 14.12.2018 for Assessment Year 2011-12.

2. Grounds taken by the assessee are reproduced as under:

1. *“On facts, in circumstances of the case and in law, the learned CIT-A, National Faceless Appeal Centre erred in dismissing the appeal with remark that appellant has no evidence to substantiate grounds taken.*
2. *On facts, in circumstances of the case and in law, the learned CIT-A, National Faceless Appeal Centre ought to have held that amount of Rs. 53,50,500/- is taxable under the head Capital Gain in the year in which transfer of capital asset takes place.”*

3. Brief facts of the case are that assessee filed his return of income on 21.06.2011 reporting total income at ₹ 2, 28,000/-. Case of the assessee was taken up u/s. 148 r.w.s. 147 of the Act based on information received by the Ld. Assessing Officer that assessee had received a sum of ₹ 53,50,500/- on account of development agreement between the society and builder on 26.04.2010. Assessee was a member of the housing society and under the redevelopment agreement, assessee was entitled to receive a new flat with additional area and a monetary compensation of ₹ 53,50,500/-. Ld. Assessing Officer called for explanation and details in this respect from the assessee in the course of reassessment proceedings, so initiated. According to the assessee, this receipt is of capital in nature and therefore had not offered it to tax in his return. Further, assessee had claimed that he had invested this amount in the REC bonds as per section 54 EC of the Act.

4. Contentions of the assessee were not accepted by the Ld. Assessing Officer and assessment was completed by holding that the amount received from the developer by the assessee of ₹ 53,50,500/- falls under the residuary head of income from other sources.

5. It is worth noting a fact that assessee had expired on 15.01.2018 and the assessment proceedings were completed on the legal heir of the assessee that is Shri Rajesh Patankar by passing the order dated 14.12.2018.

6. In the appeal before the Ld. CIT(A), it is noted that five notices were issued fixing the date of hearing and none were attended by the assessee to substantiate the claim. Ld. CIT(A) has dismissed the appeal of the assessee by observing that assessee has no evidence to substantiate the grounds taken before him and nothing has been brought out by the assessee on this count. Thus, he decided the appeal *ex parte* and dismissed it. Aggrieved, the assessee is in appeal before the tribunal.

7. Before us, Ld. counsel for the assessee referred to an affidavit by Shri Rajesh Patankar stating the facts to explain why the hearings could not be attended at the 1st appellate stage. It is explained that there were certain medical reasons in his family because of which the hearings could not be attended. Ld. counsel has also placed on record a paper book containing 113 pages, index of which is reproduced for ease of reference. Ld. counsel submitted that since 1st appeal has been dismissed *ex parte* without meritorious adjudication on the grounds of appeal, the matter may be remitted back to the file of Ld. CIT(A) for fresh adjudication.

<i>S No</i>	<i>Particulars</i>	<i>From</i>	<i>To</i>
1.	<i>Original Return of Income Ackn for AV 2011 2012 filed in response to notice u/s 148 along with the Computation of Total income and ITR Form ITR-2</i>	1	8
2.	<i>Letter from MIG Co-operative Housing Society Group il Ltd dated 28.10.2010</i>	9	10
3.	<i>Agreement between MIG Co-operative Housing Society Group Ltd and Kalpataru Properties Private Limited dated 26.04.2010</i>	11	102
4.	<i>Bank Statements indicating receipt of Rs.53,80,500/- as receipt of Hardship allowance</i>	103	107
5.	<i>Copies of Sec 54EC Bonds with REC Ltd worth Rs.50,00,000/- (September/October 2010)</i>	108	113

8. Per contra, Ld. Sr. DR objected on the prayer made by the Ld. counsel by submitting that the paper book filed by the assessee relates to additional evidences since nothing was placed before the Ld. CIT(A).

9. We have heard both the parties and perused the material available on record. Assessee had expired in the course of assessment proceedings. However, all the submissions were made before the Ld. Assessing Officer who after considering the same did not accept the claim of the assessee and made the addition. From the perusal of the order of Ld. CIT(A), we note that the appeal was instituted on 07.03.2019 and the order is passed on 08.11.2023. From the table produced in the order in paragraph 4, we note that the 1st notice for fixing the date of hearing was issued on 27.12.2020. Thereafter, after almost close to three years, within a span of two months, four notices were issued between 29.08.2023 to 16.10.2023.

10. Considering the facts on record and the explanations furnished by the assessee by way of affidavit, we find it appropriate to remit the matter back to the file of Ld. CIT(A) for the *denovo* meritorious adjudication of the grounds of appeal taken at the 1st appellate stage. We direct the ld. CIT(A) to provide reasonable opportunities to the

assessee for making his submissions and also call for remand report from the Assessing Officer, if so required. We direct the assessee also, to be diligent in attending the hearings fixed for the appeal and assist in its expeditious and effective disposal. Assessee should not seek adjournments unless warranted by compelling reasons.

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

Order is pronounced in the open court on 24 June, 2024

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 24 June, 2024***

*MP, Sr.P.S.*

**Copy to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai