

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 4583/Mum/2023
(Assessment year : 2012-13)**

Ashish Ravindra Vaidya D 10, ,Deeplakshmi, Hatiskar Marg, Prabhadevi, Mumbai- 400 025 PAN : ABAPV1776D	vs	ITO 24(1)(2), Mumbai Piramal Chambers, Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : Shri Bhupendra Shah
Respondent by : Shri Manoj Kumar Sinha(CIT DR)

Date of hearing : 10/07/2024
Date of pronouncement : 12/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2012-13 to date of order 20.10.2023. The impugned order was emanated from the order of the Id. Income-tax Officer 24(1)(2), Mumbai (in short, 'the A.O.')

passed under section 144r.w.s. 147 of the Act date of order 22/12/2019.

2. The assessee has taken the following grounds of appeal:-

*"1. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in foreclosing the proceedings and passing order exparte on 20-10-2023 that too without deciding appeal on merits by overlooking the fact that remand proceedings was fixed on 26-10-2023 **Without prejudice to the above and alternatively.***

2. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in confirming & the Learned AO erred in making addition of

- a. Rs.80,00,000/- on account of sale transaction of immovable property*
- b. Rs.23,41,032/- on account of contract receipts and*
- c. accordingly determined total income at Rs. 1,08,41,032/- which was reduced to Rs 10341032 by CIT[A] NFAC Delhi,*

3. In the facts and circumstances of the case and in law the Ld. AO was not justified in making the additions u/s 144 due to the fact that the appellant had not replied to the notice u/s 148 issued on 30.03.2019 and show cause notice dated 26-7-2019 and the notice u/s 142(1) issued on 07.10.2019 which were not received by the Appellant as he had shifted from the house which was sold as on 27.08.2002.

4. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in confirming & the Learned AO erred in making addition of

- a. By disregarding the cost of immovable property of Rs 15 lacs bought on 27/8/2002 while calculating income from long term capital gain,*

- b. By disregarding deductions under Section 54 in respect of Investment in new Property on 21.05.2011 of Rs 32,71,900/-.*

5. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in confirming & the Learned AO erred in making addition of contract receipts as per the form 26AS aggregating to Rs. 23,41,032/- which was out of Photography income by the appellant and the sales made during the year which are duly offered as income in the Trading and Profit & Loss a/c of the appellant.

6. *The learned AO has erred in failing to give TDS credit of Rs.2,72,851.13 while calculating tax liability.*

7. *In the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234 & initiating penalty u/s 271(1)(a)].*

[C] Relief Prayed: The appellant therefore prays follows,

1. *To restore the case to AO*
2. *To delete the addition of Rs1,03,41,032/-wrongly made in respect of LTCG and contract receipts Without prejudice to the above and alternatively,*
3. *To delete interest u/s 234 & initiation of penalty u/s 271 [I][c].*

[D] General: -

- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed in time and may please be allowed in full.*
- *A detailed paper book will be filed at the time of hearing.”*

3. The brief facts of the case are that the assessee is a professional photographer. During the impugned assessment year assessee sold property amount to Rs.80 lakhs and contract received amount to Rs.28,41,032/-. The assessment was completed exparte under section 144. Both the amounts were added back with the total income of the assessee which is worked out total amount to Rs.1,08,41,032/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The assessee filed the written submission and detailed calculation of the capital gain and the calculation of profit of contract received. But Ld.CIT(A) rejected the entire calculation without giving the reasonable opportunity to assessee and the assessment order is upheld. Being aggrieved, the assessee filed an appeal before us.

4. The Ld.AR argued and filed the submission before the Bench. The Ld.AR first argued that the Ld.AO has erroneously had taken the gross amount of transfer of immovable property amount to Rs.80 lakhs which is incorrect. The correct amount is Rs.40 lakhs related to transfer of property. In this respect, the sale deed is annexed in APB pages 4 to 31 and the transfer value is mentioned amount to Rs.80 lakhs. But before the Ld.CIT(A), the calculation was given and the capital gain was calculated the net LTCG amount to Rs.7,09,737/-. Also the profit was derived from the contractual receipt amount of Rs.9,73,656/- which is offered for tax under the head 'Profession'. The appellate authority reduced the addition and restricted to amount of Rs.23,79,637/- by allowing the expenses to Rs.5 lakhs. Accordingly, from gross receipts amount of Rs.28,79,637/- (-) Rs.5 lakhs which works out to Rs.23,79,637/- is confirmed. Accordingly, the appeal of the assessee is partly allowed.

5. The Ld.AR argued that during the covid period the assessment was completed and the assessee was unable to appear before the Ld.AO. and to submit the documents before the Ld.AO. The Ld.AR prayed for further opportunity before the Id. AO to submit the documents against the plea.

6. The Ld.DR vehemently argued and fully relied on the assessment order.

7. We heard the rival submission, considered the documents available in the record. The assessment of the assessee was completed exparte under section 144 and it is pertinent to mention that the period was going through covid pandemic; so the assessee was unable to submit the evidences before the Ld.AO. Even before the Id.CIT(A), the Ld.AR confirmed that no proper representation was

done and assessee was unable to submit the evidence before the Ld.CIT(A). Considering the pandemic during the time of the assessment, the assessee should get another opportunity to submit the relevant documents and the calculation before the Ld.AO. The computation was duly annexed in APB pages 1 to 3. We are, therefore, of the opinion that interest of justice would be sub served if the matters are remitted back to the file of the Id. AO for consideration of assessee's plea. The Id. DR has not made any strong objection against the submission of the Id. AR. We are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. AO. Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings. On the other hand, the assessee should be diligent in set aside assessment proceeding for expeditious disposal of assessment.

8. In the result appeal bearing **ITA No.4583/Mum/2023** is allowed for statistical purpose.

Order pronounced in the open court on 12th day of July 2024.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 12/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai