

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA.No.309/PUN/2024
Assessment Year 2017-18

Goldfinger Kataria Urban Developments, S.No.48/4/10, Rahatani, Pimpri, Pune – 411 017 Maharashtra PAN : AALFG1186A (Appellant)	vs.	ACIT, Circle-8, Pune (Respondent)
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For Assessee :	Shri Hari Krishan
For Revenue :	Shri Ramnath P. Murkude

Date of Hearing :	18.07.2024
Date of Pronouncement :	18.07.2024

ORDER

PER RAMA KANTA PANDA, V.P. :

This appeal filed by the assessee is directed against the order dated 21.12.2023 of the CIT(A)/NFAC relating to the Assessment Year 2017-18.

2. Grounds raised by the assessee are as under :

"1. The Learned CIT(A) has erred on Facts & Law in confirming the disallowance of cash expenses of Rs.1,07,930/- as per the provisions of Sec.40A(3) made by the AO without adhering to the Fact that the AO had not doubted the genuineness of the payments & has not considered the law as relied upon.

2. The Learned CIT(A) has erred on Facts & Law in confirming the disallowance of Donations of Rs.1,73,201/- made by the AO, ignoring that the AO had never made any enquiries & the receipts & cash book & ledger aspects submitted before the learned CIT(A) have not been considered & ignored. The Learned CIT(A) has erred

in ignoring & not considering the business exigencies of the civil contact business.

3. The Learned CIT(A) has erred in giving a fair trial to the Appellant for making appropriate submissions to his Ground of Appeal No.6. The Learned CIT(A) erred by not giving reasonable & adequate opportunity after deciding the issue of jurisdiction & passed the order without giving any opportunity, which was fundamental. Thus, the confirmation of Addition of Rs.2,87,50,000/- on account of commission payment is arbitrary & against the principles of reasonable opportunity & Natural Justice.

4. The Appellant Craves Leave to add, Alter, or amend any of the Grounds of the Appeal, before or during hearing of the Appeal.”

3. The ld. Counsel for the assessee at the time of hearing did not press Grounds of appeal No.1 and 2 due to smallness of the amounts for which the ld. Departmental Representative has no objection. Accordingly, the above two grounds are dismissed as “not pressed”.

4. So far as the Ground of appeal No.3 is concerned, the same relates to the order of the CIT(A) in confirming the addition of Rs.2,87,50,000/- made by the Assessing Officer (AO).

5. Facts of the case, in brief, are that the AO during the course of assessment proceedings noted that the assessee has paid commission of Rs.2,87,50,000/- to one Mr. Deepak Sathe for solving the dispute between the assessee and the land owner. In absence of complete details to his satisfaction, the AO made disallowance of the same.

6. In appeal, the ld. CIT(A)/NFAC confirmed the addition by observing as under :

“10.1 The appellant vide submission uploaded on 28/08/2023 had requested for one month’s time to submit the written submission in respect of this ground. Accordingly time was granted to the appellant vide this office letter dated 11/09/2023. However there was no response from the appellant. Therefore one more opportunity was given vide this office letter dated 11/09/2023. In response the appellant filed adjournment on 26/09/2023 accordingly the time was granted till 05/10/2023 to submit the reply. In response the appellant vide reply uploaded on 12/10/2023 requested to transfer the appeal to CIT(A) Pune-11 where appellant’s appeal for AY 2016-17 was pending. The appellant vide this office letter dated 02/11/2023 was informed about the grounds on which the cash can be transferred through NFAC to CIT(A)-11, Pune and the appellant was requested to inform the clarification/basis to enable this office to make reference to NFAC for transfer of appeal to CIT(A)-11, Pune. In response the appellant filed adjournment on 11/11/2023 requesting 15 days time to reply. Accordingly time was granted till 04/12/2023. The appellant vide reply uploaded on 01/12/2023 submitted that appellant has no problem with the jurisdiction and shown willingness to continue the appeal with this unit for AY 2017-18. From the above facts, it can be seen that in spite of adequate opportunities provided to the appellant, no written submission for the Ground No.6 is submitted by the appellant. Since the appellant failed to controvert the finding of AO with supporting evidences, the addition made by the AO on account of commission payment of Rs.2,87,50,000/- paid to Mr. Deepak Sathe is confirmed and ground of appeal raised by the appellant is dismissed.”

7. Aggrieved with such order of ld. CIT(A) the assessee is in appeal before the Tribunal.

8. The ld. Counsel for the assessee submitted that due opportunity of hearing has not been granted by the CIT(A)/NFAC to the assessee. He submitted that, in the interest of justice, the assessee should be given one more opportunity to substantiate its case before the CIT(A)/NFAC.

9. The ld. Departmental Representative on the other hand strongly opposed the arguments advanced by the ld. Counsel for the assessee and submitted that despite number of opportunities granted the assessee did not file any submission

for which the CIT(A)/NFAC was fully justified in sustaining the addition.

10. We have heard the rival arguments made by both the sides and perused the material on record. It is an admitted fact that the AO made the disallowance of Rs.2,87,50,000/- being commission paid to one Mr. Deepak Sathe for solving the dispute between the assessee and the land owner in absence of complete details to his satisfaction. We find the ld. CIT(A)/NFAC sustained the addition, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel for the assessee that, given an opportunity, the assessee is in a position to substantiate its case before the CIT(A)/NFAC. Considering the totality of the facts and circumstances of the case and in the interest of justice, we deem it proper to restore the issue to the file of ld.CIT(A)/NFAC with a direction to grant one last opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to file requisite details before the CIT(A)/NFAC on the appointed date without seeking any adjournment under any pretext failing which the CIT(A)/NFAC is at liberty to pass appropriate order in accordance with law. We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 18.07.2024.

Sd/-
[MS. ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[RAMA KANTA PANDA]
VICE PRESIDENT

Pune, Dated : 18th July, 2024
satis

Copy to :

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, A-Bench, Pune
5.	Guard File.

By Order

//True Copy //

Sr. Private Secretary, ITAT,
Pune Benches, Pune.