

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.59/Ind/2024
(Assessment Year: 2014-15)

TDK Gruh Nirman Sahakari Sanstha Maryadit 40, Bhagat singh Colony Indore	Vs.	ITO-5(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABAT7559B		
Assessee by	Shri S.S. Deshpande, AR	
Revenue by	Shri Ram Kumar Yadav, CIT- DR	
Date of Hearing	09.07.2024	
Date of Pronouncement	10.07.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 24.12.2019 of the Commissioner of Income Tax (Appeal)-2, Indore for A.Y.2014-15.

2. This appeal has been filed by the assessee on 20.01.2024 against impugned order dated 24.12.2019 therefore, there is a gap of more than four years in filing the present appeal from the date of impugned order. The assessee was asked to explain the time gap of

filing the present appeal as the assessee has shown date of communication of the impugned order in form 36 as 16.01.2024. The assessee has filed the explanation which is supported by the affidavit of President of the assessee society. The AO has filed a report of service of the impugned order vide letter dated 8th July 2024.

3. We have heard the ld. AR as well as Ld. DR on the point of delay in filing the present appeal. Ld. AR has submitted that the assessee was not aware about the impugned order and it was not in the knowledge of the assessee before recovery initiated by the department and thereafter the assessee filed an application for taking a certified copy on 23.12.2023 against which the assessee received certified copy on 16.01.2024. Thus, Ld. AR has submitted that after receiving certified copy of the impugned order the assessee immediately filed present appeal and there is no delay in filing the present appeal.

4. On the other hand, ld. DR has submitted that the assessee did not bother about the outcome of the appeal filed before the CIT(A) for almost four years and therefore, inordinate delay in filing the appeal has not been explained with sufficient cause.

5. We have considered the rival submissions and carefully perused the affidavit filed by the assessee as well as report of the administrative officer of CIT(A)-2 Indore, dated 8th July 2024. We find that the impugned order dated 24.12.2019 was sent to the assessee through speed post dated 09.01.2020 but as per the

report of the office of Administrative officer, CIT(A) the said speed post was received back undelivered with the postal remark "left" and therefore, the department has not disputed the fact that the impugned order was not served to the assessee till the certified copy of the same was issued on 16.01.2024. Accordingly in the facts and circumstances of the case we find that the appeal of the assessee is filed within the limitation from the date of communication of the impugned order. The assessee has raised following grounds of appeal:

"1. The CIT(A) has erred in upholding re-opening of assessment u/s 147.

2. The Ld. CIT(A) has erred in passing the order ex-parte without giving a proper opportunity to the assessee for hearing and without proper service of notice.

3. The CIT(A) has erred in upholding the addition of Rs.7,70,77,782/- since the provision of Housing Co-operative Societies Act are applicable to the assessee and under the statute, the assessee was required to allot/sale the plots on no profit no loss basis.

4.The assessee has received various monthly installments which are recorded in the books and also shown in the balance sheet. The guideline price of the year of booking should be considered as the correct sale value.

5. The addition of Rs.7,70,77,782/- may please be deleted.

6. The assessee craves to amend, alter or delete any of the ground of appeal."

6. At the time of hearing Ld. AR of the assessee has submitted that the AO has made an addition by invoking of provisions of section 43CA of the Act in respect of sale of the residential plots to

the members of the assessee Housing Cooperative Society on the basis of no profit no loss and therefore, the provisions of section 43CA are not applicable in case of Cooperative Society. He has further pointed out that the principal of mutuality is also applicable in this case and therefore, there is no question of any profit or loss and consequential income assessable to tax. Ld. AR has submitted that the CIT(A) has not decided the issue raised by the assessee but appeal of the assessee was dismissed for non-prosecution. Thus, the Ld. AR has pleaded that the matter may be remanded to the record of CIT(A) for adjudication on merits after giving one more opportunity of hearing to the assessee.

7. On the other hand, Ld. AR has submitted that there is nothing in section 43CA to exclude the Cooperative Society from its ambit/scope. He has relied upon the orders of the authorities below.

8. We have considered the rival submissions and carefully perused impugned order of the CIT(A). In the grounds of appeal, the assessee has raised the issue of validity of addition made by the AO by invoking provisions of section 43CA of the Act. The assessee has specifically contended that the provisions of section 43CA are not applicable in the case of the Housing Cooperative Society when the plots are sold to the members at no profit no loss basis. The CIT(A) has dismissed the appeal of the assessee for non-prosecution and has not decided the grounds of appeal on merits. Accordingly in the facts and circumstances of the case when the appeal of the assessee

was dismissed for non-prosecution we set aside the impugned order of the CIT(A) and matter is remanded to the record of the CIT(A) for fresh adjudication after giving one more opportunity of hearing to the assessee.

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

Order pronounced in the open court on 10.07.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 10 .07.2024

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*