

आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

डॉ. मनीष बोर्ड, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 551/KOL/2024
Assessment Year: 2014-15**

***Suranjan Constructions.....Appellant
[PAN: ABUFS 7481 C]***

Vs.

DCIT, Cir.-29, Kolkata.....Respondent

Appearances:

Assessee represented by: Swati Baid, A/R.

Department represented by: P.P. Barman, Addl. CIT, Sr. D/R.

Date of concluding the hearing : June 6th, 2024

Date of pronouncing the order : July 23rd, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 17.01.2024 arising out of the assessment order framed u/s 147 read with Section 144 read with Section 144B of the Act dated 28.03.2022.

2. The brief facts of the case of the appellant are that the appellant is a firm filed its return of income for the AY 2014-15 declaring total income at Rs. 'NIL'. It appears from order of the Id. AO that during the assessment year

under consideration, the assessee sold an immovable property as per the deed value of Rs. 70,70,000/- and the market value of the property assessed by ADSR, Behala for stamp duty purpose was Rs. 1,98,49,280/- and in this way there was a substantial difference of the amount to Rs. 1,27,79,280/- that is chargeable. As per ld. AO the notice has been issued to the assessing which was duly served. The assessee did not respond to the said notice and has only responded in which assessee has stated that already return has been filed for the AY 2014-15. Ld. AO has added Rs. 1,27,79,280/- been difference in the deed value and the fair market value of the property to the total income of the assessee. The said order has been challenged by the assessee before ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee on the ground of limitation as well as on merit. Being aggrieved and dissatisfied with the said order the assessee is in appeal before this Tribunal.

2.1. Ld. Counsel for the assessee challenges the impugned order as well as the order of the ld. AO thereby submitting that the ld. CIT(A) was not justified in dismissing the appeal by not condoning the delay though appellant has stated sufficient cause in his petition with respect to the delay. The ld. Counsel for the assessee further submits that the ld. CIT(A) has ignored the settled principle of law in which the Hon'ble Apex Court has held that a matter should be decided on merit and not on technical manner. The ld. Counsel for the assessee further challenges the impugned order as well as the order of the AO thereby submitting that addition of Rs. 1,27,79,280/- on account of alleged difference in the deed value and the fair market value of the property assessed by ADSR, Behala is erroneous which is apparent from the chart itself mentioned in the para 4 of the AO's order as the AO mentioned four deeds of sale but in Sl. Nos. 1 & 2 has mentioned the same deed by way of repetition but took his market value as a whole that is erroneous. It has further been submitted that ld. AO has to consider two sale deed as executed by the appellant in the relevant year. Further submission of the ld. Counsel for the assessee is that ld. AO should have waited for the valuation report which he asked but without waiting for the valuation report he passed an order and it is surprising that ld. CIT(A) has also ignored this fact and confirmed the order without assigning any reason and in a mechanical manner.

2.2. Ld. D/R supports the impugned order.

3. After hearing the rival submissions of the Counsels of the respective parties, we have perused the order of the AO as well as ld. CIT(A). As per the order of the AO during the assessment year under consideration the assessee sold the immovable property as per deed value of Rs. 70,70,000/- and the market value of the property assessed by ADSR, Behala for stamp duty purpose was Rs. 1,98,49,280/-. The AO has given a chart in his order in paragraph no. 4 which is as under:

Sl. No.	Date of sale	Deed value	Market Value	ADSR
1	19/07/2013	20,35,000	52,46,760	Behala
2	19/07/2013		52,46,760	Behala
3	05/04/2013	24,00,000	44,50,800	Behala
4	21/01/2013	26,35,000	49,04,960	
	Total	70,70,000	1,98,49,280	

3.1. On perusal of the above chart, it appears to us that in Sl. No. 1 & 2 date of sale mentioned as 19.07.2013 and in the deed value column there is only one entry mentioned that is amount of Rs. 20,35,000/- but in the market value column there were two figures mentioned an amount of Rs. 52,46,760/-. The chart finds support the arguments of the ld. Counsel for the assessee that it is nothing but only the repetition of one deed of sale. But the calculation has been taken by the AO against two that is erroneous. Further, we have gone through the order of the AO and find that on the request of assessee, DVO has been requested for the valuation of the above property but valuation report has not been received or sent by the DVO. The order of the AO has been passed in absence of any valuation report though it has been mentioned in the order which is as thus - “In view of the time barring date being 31.03.2022, the addition of Rs. 1,27,79,280/- is being made subject to the outcome of the valuation report to be submitted by the DVO.” It is surprising to note that when the order was a subject to the submission of the valuation report and valuation report is still have not been received by the ld. CIT(A) even though ld. CIT(A) has confirmed the order of the AO. We have gone through the order of the ld. CIT(A) and find that appeal has been dismissed on merit as well as on limitation. So far as the merit is concerned, we find that ld. CIT(A) has not discussed anything rather he only confirmed the order of

the AO that onus lies upon the assessee to prove and the assessee failed. As we have already stated in the preceding paragraph that the AO has clearly stated that there is no valuation report and order is being made subject to the outcome of the valuation report, then why ld. CIT(A) did not ask the DVO to submit the valuation report.

3.2. In view of the discussion made above, the order cannot be said to be justifiable and accordingly the order passed by the AO as well as ld. CIT(A) for addition of Rs. 1,27,79,280/-/- is hereby set aside. So far as the order of the ld. CIT(A) passed on limitation is concerned, we find that appellant had stated that his consultant had no idea that the order has been passed by the Department. It was entirely the latches on the part of his advocate that he had no idea that the order has been passed by the Department since the attachments were not downloaded and his advocate could not take up the matter till 30.09.2022 due to the tax audit due. It is settled law that order should be passed on merit and not on technical basis. We think that appellant has submitted a sufficient cause regarding his delay and on this score also order of the ld. CIT(A) is hereby set aside.

4. In view of the discussion made above, we find that it is a fit case to be remanded back to the file of the AO by setting aside the order of the AO as well as ld. CIT(A) for fresh decision taking into the consideration of the sale deed of the same year and on the basis of the valuation report of the DVO, the case is remanded back to the file of the ld. AO.

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

Order pronounced in the open Court on 23rd July, 2024.

Sd/-

[Manish Borad]

Accountant Member

Dated: 23.07.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

1. **Suranjan Constructions, 32/2B, Kazi Para Road, Behaha, Kolkata, West Bengal, 700034.**
2. **DCIT, Cir.-29, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata