

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.736/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Ramrao Tukaram Patil, 29, Shantai Bungalow, Opp Riviera Hotel, Mahatma Nagar, Nashik – 422 005, Maharashtra PAN : AHXPP2905M	Vs.	ITO, Ward-2(1), Nashik
Appellant		Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri Sourabh Nayak

Date of hearing : 15.07.2024
Date of pronouncement : 23.07.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 14.02.2024 for the assessment year 2016-17.

2. Briefly, the facts of the case are that the assessee is an individual, no regular return of income under the provisions of section 139(1) was filed for the A.Y. 2016-17. Based on the information available with the Department, the Assessing Officer (AO) noticed that the assessee sold an immovable property to one Mr. Sanjay Kisan Jagatap for a total consideration of Rs.1,25,00,000/-. In the absence of any compliance to the notices issued u/s.142(1) and submission of documentary proof, the

AO vide order dated 08.12.2023 passed u/s.147 r.w.s.144 made addition of Rs.1,25,00,000/- as unexplained short term capital gain.

3. Being aggrieved by the above addition, an appeal was filed before the CIT(A)/NFAC who vide impugned order dismissed the appeal *in limine* on the ground that the advance tax has not been paid by the appellant before filing of the present appeal, the present appeal shall not be admitted. Therefore, the present appeal filed is not admitted as per the provisions of section 249(4) of the Act.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. The Id. Authorised Representative for the assessee submits that the assessee did not file any return of income for the year under consideration as there was no taxable income. The assessee disputes the addition made by the AO and hence the provisions of section 249(4)(b) cannot be invoked. The assessee was not required to pay advance tax on the basis of assessed tax but was only required to pay advance tax, if any, which was payable by him, on the basis of his undisputed admitted income.

6. The Id. Departmental Representative placing reliance on the orders of the authorities submits that no interference by this Tribunal is called for.

7. We heard the rival submissions and perused the material on record. Undisputedly, the CIT(A)/NFAC had dismissed the appeal of the appellant *in limine* invoking the provisions of section 249(4)(b) by holding that the appellant had failed to discharge the advance tax liability. However, there is no material on record to indicate that there was any taxable income but for the addition made by the AO. In the

circumstances, there was no liability either to pay the advance tax or pay the self-assessment tax. The CIT(A)/NFAC was not justified in invoking the provisions of section 249(4)(b). Therefore, we remand the matter back to the file of CIT(A)/NFAC to decide the issue in appeal on merits based on the material available on record. Accordingly, the appeal filed by the assessee stands partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 23rd day of July, 2024.

sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune / Dated : 23rd July, 2024.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.