

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "B" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Raj Kumar Chauhan (JM)

I.T.A. No. 2111/Mum/2024 (A.Y. 2018-19)

Naresh Otarmal Jain 61 Kalpataru, Sheth Motisha Lane Next to MTNL Exchange, Mazgaon, Mumbai- 400010. PAN : ACMPJ6568J (Appellant)	Vs.	ITO Circle-20(1) Piramal Chamber, Mumbai. (Respondent)
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Assessee by	Shri Suchek Anchaliya
Department by	Shri Hemant Kumar Chimanlal leuva (DR)
Date of Hearing	09.07.2024
Date of Pronouncement	19.07.2024

ORDER

PER B.R. BASKARAN (AM) :-

The assessee has filed this appeal challenging the order dated 06-03-2024 passed by Ld CIT(A), NFAC, Delhi and it relates to the AY 2018-19.

2. The Ld. AR submitted that the Ld. CIT(A) was constrained to dismiss the appeal ex-parte, since the assessee did not respond to the notices issued by him. The Ld. AR submitted that the assessee is a partner in the partnership firm named M/s. Micro Ankur Developers. One of the main partners of the above said firm named Mr. Jitendra Jain was arrested and was facing prosecution for multiple offences. The Ld A.R submitted that the above said Shri Jitendra Jain was managing the accounts and hence all the details were available with him. On account of above said reason, the assessee could not appear before the Ld. CIT(A). The Ld.AR further submitted

that the assessee could not appear before the AO also on account of above reason and hence the AO has also passed the order to the best of judgment.

3. The Ld. AR submitted that the main addition made by the AO relates to Long Term Capital Gain (LTCG) of Rs.19.19 crores arising on sale of a property to M/s. Mann Pharmaceuticals Ltd. Since the assessee did not furnish any detail before the AO, the AO has assessed the entire sale consideration as LTCG without allowing deduction of cost of acquisition and cost of improvement. The Ld. AR submitted that the assessee has since collected all the details in relation to the above said transaction and those details are being filed as additional evidence under Rule 29 of Appellate Tribunal Rules along with a petition requesting the bench to admit these evidences. Accordingly, the Ld. AR prayed that these additional evidences be admitted in the interest of natural justice and the matters may kindly be restored to the file of the AO for examining them afresh.

4. We have heard the Ld. DR and perused the record. Having regard to the submissions made by the Ld. AR, we are of the view that there is reasonable cause for the assessee in not appearing before the Ld. CIT(A) & AO and also in not filing the details before the AO. It is well settled proposition of law that the total income has to be computed strictly in accordance with law. The capital gains income under the Act is computed by deducting cost and cost of improvement, if any, from the sale consideration. However, the AO has assessed entire sale consideration as capital gains, since the assessee did not furnish the details of cost of property and cost of improvement, if any. For the reasons explained by the assessee, we are of the view that additional evidences should be admitted. Accordingly, we admit the additional evidences. Since they require examination at the end of the AO, we are of the view that the entire issue should be restored to his file for examining them afresh by duly considering the additional evidences and also any other information the explanation that the furnished by the

assessee. After affording the adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance to law.

5. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 19/07/2024

Sd/-
(Raj Kumar Chauhan)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 19/07/2024

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai