

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.632/M/2024
Assessment Year: 2012-13**

Shri Govind Baboorao Rao, Room No.390, Babu Smruti, Shimpoli Village, Borivali West, Mumbai - 400092 Maharashtra PAN: AUHPR1238A	Vs.	Income Tax Officer- 42(1)(2), Room No. Kautilya Bhavan, Mumbai, Maharashtra-400051
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Manish Ajudiya, Sr. AR.

Date of Hearing : 18 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2012-13 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1055111429(1) dated 14.08.2023, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

2. Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

3. The assessee pleads the following substantive grounds in the instant appeal:

"GROUND I

On the facts and circumstances of the case, and in Law, CIT(A) erred in confirming an order u/s 143(3) of the Act passed by the Income Tax Officer 32(1)(5), Mumbai (The A.O.) ignoring the submission by the Assessee explaining the reason behind not being able to file the Agreement copy before the AO. The CIT(A) neither called for a remand report on the additional evidence nor called for any clarifications, and thus passed the order without giving proper opportunity which is bad at law.

GROUND II (without prejudice to ground I)

On the facts and circumstances of the case, and in Law, the CIT(A) erred in confirming addition made by AO amounting to Rs. 24,99,999/- as Long Term Capital Gains ignoring the fact that there were 42 other co-owners other than the assessee and the assessee has not received any amount of sale proceeds from the sale of plot

GROUND III (without prejudice to ground I and II)

On the facts and circumstances of the case, and in Law, the CIT(A) erred in confirming addition made by AO

amounting to Rs. 24,99,999/- as Long Term Capital Gains, ignoring the cost of purchase

GROUND IV

On the facts and circumstances of the case, and in Law, the CIT(A) erred in confirming addition made by AO amounting to Rs. 1,18,63,438/ u/s 50C of the Act, ignoring the submission by the appellant that the market rate was lower than the stamp duty valuation and the request of appellant for valuation to be done by DVO.

GROUND V (without prejudice to ground IV)

On the facts and circumstances of the case, and in Law, the CIT(A) erred in confirming addition made by AO amounting to Rs. 1,18,63,438/ u/s 50C of the Act, ignoring the fact that the 2.32%(1/43rd part) share of the plot of land sold. Accordingly, if any addition to be made must be restricted to 2.32% of the difference in the Stamp Duty valuation and sale consideration of the land which comes to Rs. 4,41,430/- only.

The appellant craves leave to add to, alter, and / or amend the above grounds of appeal.”

4. First of all comes the question of the assessee's share rendering him assessable qua for section 50C long term capital gains once he claims that there are total 43 ventures in the corresponding sale/transfer deed executed in the relevant

previous year. The Revenue could hardly dispute that not only the learned Assessing Officer's detailed discussion has missed this clinching issue but also this taxpayer has been assessed for the sale consideration received by his sons without even invoking the "clubbing" provisions in sections 60 to 65 of the Act.

5. It is further evident to us that both the learned lower authorities have adopted Rs.1 only as the cost of acquisition of the assessee's capital asset herein representing his ancestral property without determining the actual amount going by section 49(I)(i) to (iii) of the Act; as the case may be. Learned lower authorities have also not made any statutory reference u/s 50C(2) of the Act despite the fact that the same has been held to be mandatory in nature as per Sunil Kumar Agarwal vs. CIT (2015) 372 ITR 83 (Calcutta). Faced with this situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant appeal as well as all of his substantive grounds raised herein back to the learned Assessing Officer for his afresh appropriate adjudication as per law in very terms. Ordered accordingly.

6. Delay of 172 days in filing of the assessee's instant appeal is condoned as per his condonation averments as well as in light of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC). Ordered accordingly.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 24.07.2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.