

**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.2074/M/2024
Assessment Year: 2014-15**

M/s. Shree Shantinath Builders, A/2, Shalibhadra Nagar, 100 Feet Link Road, Nallasopara East, Maharashtra-401203 PAN: ABXFS7281D	Vs.	ACIT, Circle 4, Ashar IT Park, 6 th Floor, Road No.16Z, Wagle Industrial Estate, Thane (West), Maharashtra-400604
(Appellant)		(Respondent)

Present for:

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

Date of Hearing : 18 . 07 . 2024
Date of Pronouncement : 26 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2014-15 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1061644109(1) dated 28.02.2024, in proceedings under section 143(3) 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:

"1. The Hon. CIT (A), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the appeal ex-parte, for alleged non-compliance to appeal notices, when in reality, written submission was already filed on 09.05.2018 before the Hon. CIT(A) 3, Thane and the appeal was physically heard on 09.05.2018 & 24.07.2018 respectively, by the Hon. CIT(A) 3, Thane and therefore the order dismissing the appeal for non-attendance is not justified and may kindly be quashed/set aside.

2. The Hon. CIT (A), National Faceless Appeal Centre (NFAC), Delhi erred in dismissing the appeal ex-parte, for alleged non-compliance to appeal notices, when the appellant was not aware of such notices issued and for this reason, the order dismissing the appeal for non-attendance is not justified and may kindly be quashed/set aside.

3. The Hon. CIT (A) erred in dismissing the appeal ex-parte, for alleged non-compliance to hearing notices, without deciding the appeal on the merits and for this reason also the order of the Hon. CIT(A) is bad-in-law and required to be set aside.

4. *The Hon. CIT(A) erred in upholding the addition of Rs.1,22,96,654/- u/s 43CA of the I.T Act 1961, on account of difference between the actual sale consideration and the value as per stamp valuation authority, in respect of development rights/FSI sold by the appellant at village Nilemore, Tal Vasai, District Thane, not appreciating that such addition was not justified and merited deletion.*

5. *The Hon. CIT(A) erred in upholding the addition of Rs.1,22,96,654/- u/s 43CA of the I.T Act 1961, by imposing the values as per stamp valuation authority to be the deemed sale consideration in respect of development rights/FSI sold by the appellant, without referring the valuation to the valuation officer as provided u/s 43CA(2) of the LT Act 1961.*

6. *The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal.”*

4. It emerges at the outset from a perusal of the learned CIT(A)/NFAC's detailed discussion that the impugned 43CA addition of Rs.122,96,654/- representing actual sale price vis-à-vis stamp valuation of the relevant stock in trade sold herein, has been upheld in the lower appellate findings in paragraph 5 to 5.5 without even discussing anything on merits thereby violating the relevant statutory condition in section

250(6) of the Act requiring it to frame points of determination followed by a detailed adjudication there. Faced with this situation, we deem it appropriate to restore the assessee's instant appeal back to the learned CIT(A)/NFAC for its afresh appropriate adjudication as per law. The same shall be subject to a rider that it shall be assessee's risk and responsibility only to plead and prove all the relevant facts in consequential proceedings within three effective opportunities of hearing. Ordered accordingly.

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

Order pronounced in the open court on 26.07.2024.

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.