

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 2561/MUM/2024
(Assessment Year : 2018-19)**

M/s Raghvendra Construction Company Private Ltd. 522, 5 th Floor, The Summit Business Bay, Andheri Kurla Road, Andheri (East) Mumbai-400069.	Vs.	National e-Assessment Centre/ITO-11(1)(1) Room No. 201, 2 nd Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020.
PAN/GIR No. AACCR7371Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. M. Subramaniam
Revenue by	Smt. Mahita Nair- Sr. DR
Date of Hearing	31/07/2024
Date of Pronouncement	31/07/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 27.02.2023 passed in Appeal no. NFAC/2017-18/10008188 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2018-19, wherein learned CIT(A) has dismissed assessee's first appeal in default of assessee.

2. Briefly stating the facts, that the return of Rs. Nil, filed by the assessee on 14.09.2018 for A.Y. 2018-19, was selected for scrutiny. After issuing statutory notices u/s. 143(2) and 142(1) of the Act and considering the response uploaded by the assessee, learned assessing officer made addition of Rs. 23,10,000/- under the head income from capital gains. Aggrieved by the assessment order, assessee filed an appeal before learned CIT(A), who dismissed assessee's appeal in absentia.
3. Assessee has filed this appeal on the ground that learned CIT(A) has erred in confirming the above said addition, ignoring the fact that the flats, given free of cost, were in the nature of stock in trade.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
5. We have perused the records and heard learned representatives for both the parties.
6. Learned AR has submitted that learned CIT(A) has passed ex-parte order in violation of the principles of natural justice and erringly made the addition of said capital gain.
7. Learned DR has submitted that the assessee was provided sufficient opportunity of hearing by issuance of notices on four occasions by learned CIT(A) but for no avail. Learned DR has supported impugned order passed by the first appellate authority.

8. Perusal of the impugned order shows that learned CIT(A) has mentioned in para 6 of the impugned order that the appellant has not pursued the appeal. He further mentioned in the impugned order that no details, documents or submissions were provided by the appellant to substantiate his claim of transfer of asset. This conclusion led him to dismiss assessee's first appeal.
9. We notice that learned CIT(A) was expected to state the points for determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act. We are conscious of the fact, that assessee has not turned up before the first appellate authority in response to the notices issued on four different occasions. However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation on the merits of the case. The appeal is thus liable to be allowed.

10. In the result, the appeal is allowed. Impugned order dated 27.02.2023 is set aside. The case is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced in open court today i.e on 31.07.2024.

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai; Dated 31/07/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai