

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 1716/Mum/2024  
(Assessment Year: 2012-13)**

<b>Kisanrao Baban Tarmale</b> Flat No. 301, 3 <sup>rd</sup> Floor, Navre Plaza, Damodar Building, Shiv Mandir Road, Shivaji Chowk, Ambernath (East), Mumbai-421501. <b>PAN : AAOPT7102L</b>	Vs.	<b>National Faceless Appeal Centre (NFAC) / ITO, Ward-2(2), Mumbai.</b>
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Shri Vimal Punmiya, CA  
**Revenue/Respondent by** : Shri R. R. Makwana, Sr. DR

**Date of Hearing** : 15.07.2024  
**Date of Pronouncement** : 26.07.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) dated 09.02.2024 for Assessment Year (AY) 2012-13. The assessee raised the following grounds of appeal.

*“1. The Ld.CIT (A) did not provide an proper opportunity of being heard and passed an order on 09.02.2024 whereas the response date for the show cause notice was on or before 13.02.2024.*

*2. The Ld. CIT(A) has erred in adding the Full Stamp Duty Value of Rs.3920000 failed to appreciate indexed cost incurred 427488.*

*3. The Ld. CIT(A) erred in not allowing deduction u/s 54 of Rs.30,20,000/- as being cost of Flat of 1615 Sq Fts. construction of same completed Dec 2014.*

*4. The Ld. CIT(A) erred in invoking penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.*

*5. The Ld. CIT(A) erred in confirming the charging of interest under section 234B and 234C of the Income Tax Act 1961.*

*6. The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

2. The assessee is an individual and filed the return of income for AY 2012-13 on 30.03.2014 declaring a total income of Rs. 2,62,770/-. The Assessing Officer (AO) based on the information available on individual transaction statement noticed that the assessee has sold immovable property on 23.03.2012 for consideration of Rs. 39,20,000/-. The AO re-opened the assessment by issuing notice under section 148 for the reason that the assessee has not declared the income arising from the sale of immovable property. Since the assessee did not file any response, the AO completed the assessment under section 144 r.w.s. 147 of the Income Tax Act (the Act) by adding the entire amount of Rs. 39,20,000/- as Long Term Capital Gain (LTCG) in the hands of the assessee. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) dismissed the appeal for the reason that the assessee did not respond to the notices issued. The relevant observations of the CIT(A) is extracted below:

*“4. It is pertinent that in order to decide this appeal in a timely manner, a number of notices/communications/correspondences were made through ITBA portal to the appellant, viz., communications dated 14.01.2021, 08.12.2023,*

*01.01.2024 and 06.02.2024. However, there has been no compliances from the part of the appellant till date except adjournment requests. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. Hence, in view of the aforesaid total non-compliance of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis of documentation available on record. The appellant has failed to avail the opportunity to file / furnish the submissions/documents in support of the grounds of appeal though the appellant was offered for sufficient opportunity to file/furnish the submissions during the course of appellate proceedings. Furthermore, it is pertinent that the appellant has not sought any adjournment during the appellate proceedings.”*

3. The Id. Authorized Representative (AR) submitted that the assessee has filed all the relevant details before the AO and the same has not been considered by the AO. Further the Id. AR drew our attention to the notice dated 06.02.2024 issued by the CIT(A) wherein he has given the response due date as 13.02.2024. The Id. AR submitted that the assessee had filed the relevant details before the CIT(A), however, the CIT(A) has passed the appellate order on 09.02.2024 i.e. much before the date on which the response was due. Therefore, the Id. AR submitted that there is a clear violation of principles of natural justice wherein the assessee was not given a property opportunity before the lower authorities.

4. The Id. Departmental Representative (DR) on the other hand relied on the order of the lower authorities.

5. We have heard the parties and perused the material on record. We notice from the documents submitted before us that the assessee has filed details such as computation of income, capital account, balance sheet along with capital gain calculation etc. before the AO on 18.03.2019 (page 9 of PB). We also notice that

the assessee on 26.-03.2019 has filed the copies of the agreement of sale before the AO (page 10 of PB). However, it is noticed that the AO has completed the assessment under section 144 stating that the assessee has not filed any documentary evidences. From the perusal of records we notice that the CIT(A) in the notice issued on 06.02.2024 has given the response due date as 13.02.2024 however has dismissed the appeal on 09.02.2024 on the ground that the assessee has not furnished any details. Therefore, we see merit in the argument of the ld.AR that the assessee was not given a proper opportunity of being heard by the lower authority. Therefore, in the interest of natural justice and fair play, we remit the issue back to the AO with a direction to consider the various details filed by the assessee. The AO is further directed to call for any details that may be required in this regard and decide the case in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

6. In the result, the appeal is allowed for statistical purposes.

*Order pronounced in the open court on 23-07-2024.*

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**