

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

Before Shri Narendra Kumar Choudhary (JM) &
Shri Omkareshwar Chidara (AM)

I.T.A. No. 4560/Mum/2023 (A.Y. 2012-13)

Ashish Ravindra Vaidya D 10, Deeplakshmi Hatiskar Marg Prabhadevi Mumbai-400025. PAN : ABAPV1776D (Appellant)	Vs.	ITO 24(1)(2) Piramal Chambers Mumbai-400 012. (Respondent)
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Assessee by	Shri Bhupendra Shah ,CA
Department by	Shri Manoj Kumar Sinha
Date of Hearing	25.06.2024
Date of Pronouncement	31.07.2024

ORDER

Per Omkareshwar Chidara (AM) :-

In the above captioned appeal, the assessee Ashish Ravindra Vaidya filed an appeal before the ITAT with the following grounds of appeal :-

1. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in foreclosing the proceedings and passing order exparte on 20-10-2023 that too without deciding appeal on merits by overlooking the fact that remand proceedings fixed on 26-10-2023 Without prejudice to the above and alternatively,

2. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in confirming & the Learned AO erred in levying penalty of 271(1)(c) of Rs 3197438/-in respect of additions of

- Rs. 80,00,000/- on account of sale transaction of immovable property
- Rs. 23,41,032/- on account of contract receipts and
- accordingly determined total income at Rs. 1,08,41,032/- which was reduced to Rs 10341032 by CIT[A] NFAC Delhi,

[C] Relief Prayed: The appellant therefore prays follows,

- To restore the case to AO

2. To delete the penalty of Rs 3197438/- wrongly made in respect of LTCG and contract receipts.

2. From the assessment order, it can be seen that the assessee is a non-filer and case was reopened by Learned Assessing Officer (Ld. AO for short) under section 147 of the Income Tax Act (the Act for short) by issuing a notice u/s. 148 of the Act. After obtaining necessary approval from the competent authority, the Ld. AO reopened the assessment and issued required notices. As per the information available with the Department, the assessee sold immovable property valued at Rs. 80 lakhs and no return of income was filed. No details are available about the computation of capital gains. Apart from this, the assessee received an amount of Rs. 28.41 lakhs towards contract receipts also. Since there is no response from the assessee for all the notices issued, assessment was completed u/s. 144 read with section 147 of the Act. After completing assessment, penalty proceedings were also initiated for concealment of income. There is no response to this penalty notice also. Hence, show- cause notice was issued and it was duly delivered upon the assessee on 27.2.2021 in which it is clearly mentioned that failure to comply with this notice, penalty order would be passed based on the facts and figures available on record. The assessee did not comply with this notice too. In view of the same, Order u/s. 271(1)(c) levying penalty was passed by Ld. AO.

3. Aggrieved by the penalty levied by Ld. AO, assessee filed an appeal before the Ld. CIT(A) stating that the ex-parte order of Ld. AO is incorrect and hence the same may be deleted. The assessee has stated that earlier notices have gone to his earlier address and hence compliance was not there from his side. The Ld. CIT(A) has given seven opportunities to file written submissions on ITBA module. All these notices were sent by the Ld. CIT(A) to the mail-id given by the assessee while filing the appeal. But still there is no response from assessee. The Ld. CIT(A) dismissed the appeal by the assessee holding that in spite of numerous opportunities given to him, appellant has

not discharged the burden of proof to explain entries reflected in Form 26AS and bank account. Holding so, the Ld. CIT(A) dismissed the appeal of assessee.

4. Further aggrieved by the order of the Ld. CIT(A), assessee filed an appeal to ITAT with the grounds of appeal mentioned above. Ld. AR of the assessee, during hearing has argued that the Ld. CIT(A) passed an ex-parte order on 20.10.2023 by overlooking the fact that the remand proceedings were fixed on 26.10.2023 i.e., even before receiving the remand report, the appeal order was passed. Moreover, the Ld. CIT(A), National Faceless Appeal Centre erred in foreclosing proceedings and decided the appeal only due to absence of appellant. The Ld. CIT(A) has not decided the case on merits. Ld. AR of the assessee pleaded that the case may be restored to the AO and delete the penalty with respect to Long Term Capital Gain and contract receipts. Ld. DR relied on the orders of the lower authorities and vehemently argued that there is no response from the side of the assessee despite several notices issued by the Ld. AO and the Ld. CIT(A). It was argued by Ld. AR that penalty levied should be confirmed because the details were mentioned in Form 26AS and bank statement of assessee himself.

5. Heard both sides. It is a fact that the appellant has not filed return of income despite there are certain transactions like sale of immovable property as well as contract receipts by the assessee. It is also a fact that several notices were issued by Ld. AO and the Ld. CIT(A) and there is no response from appellants side. But the fact remains that the Ld. CIT(A) called for remand proceedings and without getting remand report from the Ld. AO, penalty order was passed by the Ld. CIT(A). After going through the material on record and hearing both sides, it is decided that one more opportunity would be given to the appellant to file his submissions before the Ld. CIT(A). The Ld. CIT(A) is directed to take into consideration all arguments and material filed by the appellant and pass an order on merits. As there is no compliance to several notices issued by the Income Tax Department, Rs.

10,000/- cost is imposed on assessee which has to be paid to the Income Tax Department within one month from the date of receipt of this order. The matter is remanded to the file of the Ld. CIT(A) with the above directions.

6. With the above direction, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31st July, 2024.

Sd/-
(Narender Kumar Choudhary)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 31.07.2024

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

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