

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member

**I.T.A No.491/Kol/2024
Assessment Year: 2015-16**

**Dhirendra Nath Das.....Appellant
C/o Jain Vinod & Associates,
41A, AJC Bose Road, Suite No.613,
6th Floor, Kol-700017.
[PAN: ADGPD9102P]**

vs.

ITO, Ward-1(3), Durgapur.....Respondent

Appearances by:

Shri V. K. Jain, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 25, 2024

Date of pronouncing the order : August 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. The Ld. CIT(A) erred in law as well as on fact in dismissing the appeal when he ought to consider that Jurisdictional Assessing Officer has wrongly assumed the jurisdiction u/s 147 of the Act hence the assessment order passed there on is null and void ab-initio.

2. The Ld. CIT(A) NFAC erred in law as well as on fact to uphold the assessment order of the JAO treating Agreement of development as

Transfer' u/s 2(47) of the Act, whereas none of the condition thereof are applicable on the fact.

3. The Ld. CIT(A) NFAC erred in law as well as on facts to dismiss the appeal of the appellant without considering that the agreement for development did not materialized and was non est at the time of assessment.

4. That the appellate craves leave to add, modify or amend the ground of appeal and to adduce additional evidence in support of ground of appeal at the time of hearing of the case.”

3. At the outset, the ld. Counsel for the assessee has submitted that the Assessing Officer has made the impugned addition of Rs.65,45,637/- on accrual basis treating the Joint Development Agreement executed by the assessee as transfer u/s 2(47) of the Act. The ld. Counsel for the assessee has submitted that though the assessee had executed a JDA, however, never handed over the possession of the land to the developer. That there was a condition that the land will be handed over for development after getting it vacated from the tenants. That since the land could not be vacated from the tenants, therefore, the same could not be handed over to the developer. That due to this, the JDA did not mature and hence neither income was received nor accrued to the assessee for the year under consideration.

4. The ld. DR, on the other hand, has submitted that the above details/submissions were not produced before the Assessing Officer.

5. The ld. AR of the assessee however has submitted that there was no proper representation before the Assessing Officer by the concerned AR resulting into passing of the ex parte assessment order u/s 147 r.w.s 144 of the Act. He, therefore, has submitted that the assessee may be given an opportunity to furnish the true and actual facts before the Assessing Officer.

6. Considering the above submissions of the assessee, we are of the view that the interests of justice will be well-served if the assessee is given an opportunity to present his case before the Assessing Officer. In view of this, the impugned order of the Assessing Officer is set aside and the matter is restored to the file of the Assessing Officer for de novo assessment. Needless to say that the Assessing Officer will give proper opportunity to the assessee to present his case.

4. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 2nd August, 2024.

Sd/-
[Rajesh Kumar]
लेखा सदस्य /Accountant Member

Sd/-
[Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 02.08.2024.

RS

Copy of the order forwarded to:

1. Dhirendra Nath Das
2. ITO, Ward-1(3), Durgapur
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches