

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष

Before

SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER

I.T.A. No.: 411/KOL/2024
Assessment Year: 2017-18

Mukesh Agarwal.....*Appellant*
[PAN: AHJPA 3692 C]

Vs.

ITO, Ward-2(1), Siliguri.....*Respondent*

Appearances:

Assessee represented by: Nirupama Db, A/R.

Department represented by: Amuldeep Kaur, JCIT, Sr. D/R.

Date of concluding the hearing : May 15th, 2024

Date of pronouncing the order : August 8th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 03.01.2024 arising out of the assessment order framed u/s 143(3) of the Act dated 27.12.2019.

2. The brief facts of the case of the appellant are that the appellant being an individual deriving income from salary, business and truck plying in addition to the interest income. The assessee filed his return of income for AY

2017-18 declaring total income of Rs. 5,68,970/-. Subsequently, the case was selected for scrutiny and notices have been issued to the assessee with the questionnaire. After hearing the parties, the Assessing Officer (in short ld. 'AO') has held that there is an excess capital gain earned worth of Rs. 33,20,998/- and also the assessee has not voluntarily disclosed the revenue derived from the sale of land vide two Conveyance of Deed No. 5694 of 2016 and 5696 of 2016. Hence, 50% of aggregate revenue earned amounting to Rs. 24,07,923/- which comes to Rs. 12,03,962/- is treated as undisclosed receipt and assessed the income of the assessee at the rate of Rs. 50,93,930/- . The assessee challenged the said order before the ld. CIT(A) but ld. CIT(A) has been disposed off the matter on the ground that appellant after filing the appeal, even receiving of the notices, did not appear nor file any documents, hence, the appeal has been dismissed *in-limine* without touching the merit of the case. Being aggrieved and dissatisfied with the appellate order, the assessee is in appeal before this Tribunal.

3. Ld. Counsel for the assessee challenges the impugned order thereby submitting that ld. CIT(A) has erred in assuming that the appellant is not interested in proceeding the appeal though the fact is that appellant has not been served any notices. Prayer of the ld. Counsel for the assessee is that the appeal has been decided by ld. CIT(A) without entering into the merit of the case, hence, it is liable to be set aside to the file of ld. CIT(A) and reasonable opportunity should be given to the assessee to place his grievance before the ld. CIT(A). The other grounds have also been taken by the assessee on the merit of the case. Ld. CIT(A) has admitted to this fact that ld. CIT(A) has disposed off the case *in-limine* without touching the merit of the case as the assessee in spite of receiving of notices, did not appear.

4. We have perused the order of the ld. CIT(A) and find that the appeal has been decided *ex-parte* as the appellant did not place his submission. The operative portion of the of ld. CIT(A) is thus:

"I have carefully gone through the facts of the case. Moreover, all notices were duly served upon the appellant through email. The appellant opted not to respond the above notices for the reason best known to him. No

documents were produced before me in support of his GOA or to rebut the assessment order. In view of the above facts, it is clear that the appellant is not interested in prosecuting the present appeal on merits and therefore in absence of any evidence to rebut the assessment order, the assessment order is CONFIRMED and accordingly the appeal is dismissed. Hence all Ground of appeal raised by the appellant are dismissed.”

5. From perusal of the above order it is clear that the appeal of the assessee has been disposed off without entering into the merit, hence, for the interest of justice, we are in this view that the assessee should be given an opportunity to place his all material before Id. CIT(A) against the issue decided by the AO. Accordingly, the appeal is hereby allowed by setting aside the order of Id. CIT(A). The case record is restored to the file of Id. CIT(A) for afresh adjudication after affording reasonable opportunity to the assessee. The assessee is also directed to remain vigilant and cooperate in the case.

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

Order pronounced in the open Court on 8th August, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 08.08.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Mukesh Agarwal, Sharda Complex, 2nd Floor, Sevoke Road, Siliguri, West Bengal, 734001.**
- 2. ITO, Ward-2(1), Siliguri.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata