

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 3236/Mum/2024**  
**Assessment Year: 2013-14**

<b>Dedhia Associates</b> A-107/108, Laxmichhaya Babai Naka, L.T. Road Borivali (West) Mumbai - 400092 <b>[PAN: AAefd5810B]</b>	Vs	<b>Deputy Commissioner of Income Tax - 42(1)(1), Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Anuj Kisnadwala, A/R
Revenue by :	Smt. Mahita Nair, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 14/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 20/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM :**

This appeal by the assessee is preferred against the order dated 30/05/2024, framed by the NFAC, Delhi, [in short 'Id. CIT(A)'], pertaining to Assessment Year 2013-14.

2. The grievance of the assessee reads as under:-

*"This Appeal is filed against Ex-party order passed by Hon'ble CIT (A) NFAC on the following grounds of appeal each one of them should be considered separately of others.*

*1.1 The Hon'ble CIT (A), NFAC erred in facts and circumstances of the case and in law in passing Ex-party order and rejecting the appeal without considering various grounds on merit.*

*1.2 Your appellant has partially responded to various notices/ letters issued by CIT (A) NFAC, in appeal proceedings*

*1.3 The Hon'ble CIT (A) has not given sufficient time and opportunity to your appellant to make detailed submission and to attend appeal proceedings in person*

1.4 Your appellant pray that the Ex-party order is to be set aside and the matter to be revert back to Hon'ble CIT (A) to hear the appeal on merit.

2.1 The Hon'ble CIT (A), NFAC erred in facts and in circumstances of the case and in Law in upholding A.O. action in re-opening of already completed assessment in scrutiny U/s. 143(3).

2.2 Your appellant pray that the assessment has been wrongly and incorrectly re-opened U/s. 147 and notice U/s. 148 is wrongly and incorrectly issued. Order passed U/s. 143(3) r.w.s. 147 by Ld. AO is to be quashed.

3.1 The Hon'ble CIT (A), NFAC has wrongly and incorrectly upheld the AO action in making the addition of notional annual ratable value of 3 flats which remains in stock as on 31/03/2013, adding Rs. 3,80,814/- as a notional income from House Property.

3.2 Your appellant has not rented out the said 3 flats and no rental income has been earned out of the 3 flats.

3.3 Your appellant is Builder and Develepor and the said 3 flats remained in stock as on 31/03/20213 was in process of sale to prospective buyers.

3.4 Your appellant prays that no income from house property is to be notionally taxed in case of appellant, who is Builder and Developer and addition made to total income under the head "income from house property" at Rs. 3,80,814/- is to be deleted.

4.1 The Ld. AO has wrongly and incorrectly levied interest U/s. 234B of Rs. 13,30,148/- instead of Rs. 2,76,198/- as per Return of Income.

4.2 Your Appellant prays that the interest U/s. 234B is to be restricted to Rs. 2,76,198/- and excess interest charged U/s. 234B at Rs. 10,53,950/- (Rs. 13,30,148 - Rs. 2,76,198) is to be deleted.

5.1 Your appellant prays for the leave to add, amend, alter, modify or delete any of the grounds of appeal."

3. Briefly stated, the facts of the case are that the assessee has filed its return of income on 28/09/2013 declaring total income of Rs.12,33,11,920/-. The assessment was completed on 30/03/2016 assessing total income at Rs.12,76,86,920/- making disallowance of deduction u/s 35 of the Act amounting to Rs.43.75 Lakhs. The assessment was reopened u/s 147 of the Act and accordingly statutory

notices were issued and served upon the assessee. Assessment u/s 143(3) r.w.s. 147 of the Act was framed vide order dt. 19/11/2018 *interalia* making disallowance of addition for income from house property amounting to Rs.3,80,814/-.

3.1. The assessee carried the matter before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee for non-prosecution.

4. We have carefully considered the order of the Id. CIT(A), we find that NFAC issued four notices. The first two notices dated 21/02/2020 and 25/01/2021 were not attended by the assessee. The reason for non-attendance is that, it was the period of Covid-19 and due to pandemic, there was total disturbance. In compliance to the notices dated 01/11/2022, the assessee electronically filed the following response:-

*"To,*  
*The Hon. CIT (A), NFAC,*  
*New Delhi.*

*Date: 02/11/2022*

*Respected Sir,*

*Sub: Note in response to Letter dated 31/10/2022 (DIN: ITBA/NFAC/S/62/2022-23/1046555671(1))*

*Ref: 1. PAN: AAefd5810B*

*2. Your letter dated 31/10/2022 bearing DIN: ITBA/ NFAC/S/62/2022-23/1046555671(1) A.Y. - 2013-14*

*With reference to our Appeal filed for the A.Y. 2013-14, we have to state as under:-*  
*(1) First Appeal (Addition of Rs. 43,75,000 - Disallowance U/s. 35 (i)(ii) Appeal filed against Order U/s. 143(3) of Income Tax Act 1961 dated 30/03/2016 passed by Jt. CIT, Range 32(1), Mumbai for which appeal has been filed manually to CIT (A), 44, Mumbai on 20/04/2016. Manual hearing took place before the Hon. CIT (A) 46 Mumbai on 04/02/2020 wherein the detail submission along with paper book - 1 submitted (Appeal No. CIT(A)46, Mumbai/10188/2017-18 Further, in response to Notice U/s. 250 dated 22/12/2020, detail submission made online on portal on 12/01/2021 in three parts vide acknowledgement Nos. 12012113789127 (Part-1), 12012113789336 (Part - 2) & 12012113789432 (Part 3) Enclosed copies of*

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*Acknowledgements of three submissions. Till date we have not heard from the Hon. CIT (A) regarding personal hearing neither we have received any CIT Appeal order.*

*(2) Second Appeal for A. Y. 2013-14 (Addition of Notional Rent Rs. 3,80,814) We have also filed one more appeal for A. Y. 2013-14 against Order U/s. 143*

*(3) r.w.s. 147 passed by ACIT-31(1), Mumbai vide order dated 19/11/2018 for which appeal has been e-filed vide transaction ID: 6474591668 dated 08/12/202018 and Form 35 Filing Acknowledgement No. 386286021081218 dated 08/12/2018 (Enclosed copies of both Acknowledgement) on the grounds of deemed rent. Against the said appeal, so far no notice has been received from NFAC. So, no detail submission has been made on portal. 3) Please let us know in response to your letter dated 31/10/2022 DIN: ITBA/NFAC/S/62/2022-23/1046555671(1) against which appeal we have to make detail submission and / or personal hearing before Hon. CIT (A) through Video conferencing.*

*Thanking you,*

4.1. Yet, the Id. CIT(A) chose not to consider the same and thereafter the appeal was dismissed for non-prosecution.

5. We are of the considered view that once the assessee has responded with the aforementioned reply, the Id. CIT(A) ought to have considered the same. However, in the interest of justice and fair-play, we deem it fit to retore the issues to the file of the Id. CIT(A). The Id. CIT(A) is directed to decide the issues afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

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

**Order pronounced in the Court on 20<sup>th</sup> August, 2024 at Mumbai.**

**Sd/-**

**(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER**

**Sd/-**

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 20/08/2024

*Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai