



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHIR VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1340/PUN/2024
निर्धारण वर्ष / Assessment Year: 2013-14

Ashok Radhakrishan Chechnai, Plot No.B-56, Sector C-N-4, CIDCO, Aurangabad – 431001 PAN: AAPPC5074R	V s	The Income Tax Officer, Ward-1, Jalna.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Sanjeevkuamr B Kabra – AR
Revenue by	Shri Sandeep P Sathe – JCIT(DR)
Date of hearing	22/08/2024
Date of pronouncement	23/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Assessee against the order of Id.Commissioner of Income Tax(Appeal)/JCIT(A), Gwalior passed under section 250 of the Income tax Act, dated 28.02.2024 for the A.Y.2013-14. The assessee has raised the following grounds of appeal :

“1. Whether the learned Assessing Officer is justified in passing the assessment order for the year on the basis of Joint Development Agreement without verifying the fact that possession of plot till



24/07/2014 remains with me/us.

2) The addition at Rs. 1133892/-.

The learned Assessing Officer has erred considering my share as 1/6th in the profit on Joint Development Agreement at Rs. 1133892/- for the year under appeal even though the possession of plot taken by the developer in in FY 2014-15 (AY 2015-16). My total share for capital gain works out at Rs. 760665/- only.

The learned Addl JCIT (Appeal) has not justified in dismissing the appeal without considering the additional grounds of appeal and submission and evidences produced.

Thus, the addition confirmed by Addl JCIT (Appeal) by dismissing appeal may kindly be deleted.

3. Claim of Deduction u/s. 54F.

The learned Assessing Officer is not justified in not allowing deduction u/s. 54F of the I.T. Act, 1961.

In consideration of share of Plot the builder has agreed to hand over three flats in co-ownership with my brother Shivprashad R. Chechni for which I am eligible for deduction u/s 54F of the Act.

Thus, the deduction u/s 54F may kindly be allowed.

4. The notice under section 148 has not been served on me before passing of the order as mandated by section 148(1) of the I. T. Act, 1961.

Thus, the assessment order passed by the learned assessing officer is not a valid order, the same may kindly be set aside.”

Submission of Id.Authorised Representative(ld.AR) :

2. The Id.Authorised Representative(ld.AR) for the Assessee submitted that assessee's appeal was dismissed by the Id.CIT(A)/JCIT(A) without discussing each and every ground and merits of the case and merely dismissed for non-compliance. Hence, Id.AR requested for one more opportunity of being heard to the assessee.

Submission of Id.Departmental Representative(ld.DR) :

3. The Id.DR for the Revenue relied on the order of Assessing Officer(AO) and Id.CIT(A)/JCIT(A).

Findings & Analysis :

4. We have heard both the parties and perused the records. It is observed from the order of the Id.CIT(A)/JCIT(A) that the Id.CIT(A)/JCIT(A) did not decide the grounds of appeal on merit but merely dismissed the appeal of the assessee for non-compliance. The Id.CIT(A)/JCIT(A) has not adjudicated grounds raised by the assessee on merits.

4.1 It is observed that the Id.CIT(A)/JCIT(A) vide its order dated 28.02.2024 has dismissed appeal of the assessee as under :



“5.1 However, in the interest of natural justice, the case of appellant was examined on merit in the light of SOF and grounds of appeal but in the absence of response or written submission, appeal is required to be adjudicated drawing adverse inference. It appears that the appellant is not interested in pursuing his case on merits. Based on these observations, the appeal of the appellant stands dismissed.”

4.2 The Hon’ble Bombay High Court has held in the case of Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF)(Bombay)/[2017] 297 CTR 614 (Bombay) as under :

Quote, “8.From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act.

Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect



from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn.

Therefore, it would be noticed that the powers of the CIT(A) is coterminous with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.” Unquote.

5. Thus, the Hon’ble Bombay High Court has categorically held that ld.CIT(A) has to decide the appeal on merit and ld.CIT(A) does not have any power to dismiss appeal for non-prosecution.

5.1 In this case, Assessee has mentioned in the grounds of appeal that “Notice u/sec.148 was not served”, hence order is bad in law. The ld.CIT(A) must verify facts and adjudicate this ground along with other grounds.



6. In view of the above, the order of the ld.CIT(A)/JCIT(A) is set-aside to ld.CIT(A) for denovo adjudication. The ld.CIT(A)/JCIT(A) shall provide opportunity of hearing to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 23rd August, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 23rd August, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.