

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No.3369/Mum/2024
(Assessment Year: 2016-17)

Shree Samarth Constructions Room No. 7, Indira Nagar Kishan, No.2 Opp. Balasara Co. Wagle Estate, Thane (W), Thane-400 604	Vs.	National Faceless Assessment Centre North Block, Delhi-110 001
PAN/GIR No. ACGFS 8803 D		
(Assessee)	:	(Respondent)
Assessee by	:	Dr. K. Shivaram - Sr. Adv. & Ms. Neelam Jadhav - Advocate
Respondent by	:	Shri Shambhu Yadav
Date of Hearing	:	22.08.2024
Date of Pronouncement	:	23.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

2. During the appellate proceedings, it was observed that the appeal has been filed by the assessee with a delay of 66 days for which an Affidavit has been filed briefing the reason for the said delay. Upon perusal of the same, we deem it fit to hold that there was 'sufficient cause' for the said delay and the same was duly explained by the assessee. Delay condoned.

3. The assessee has raised the following grounds of appeal:

- **Ex-Parte Order**
- *The National Faceless Appeal Centre (NFAC) erred in passing an ex-parte order without giving a reasonable opportunity of hearing to the appellant, hence the ex-parte order may be set aside.*
- *Without prejudice to above the, the National Faceless Appeal Centre ought to have decided the appeal on merits by passing a speaking order and ought not to have decided the grounds on merits. Hence, the ex-parte order may be set aside.*

Without prejudice to the above,

- **Addition of Rs.2,81,63,000/- made u/s. 69 as an unexplained investment for the purchase of Immovable Property.**
- *The National Faceless Appeal Centre (NFAC) erred in confirming the addition of Rs.2,81,63,000/- u/s.69 as unexplained investment, without appreciating that, the Appellant Firm is engaged in the business of construction and in the year the appellant has made only Joint Venture for development of Project, as there is no transaction was done for the purchase of property. Therefore, there is no question of making investments in properties. Hence the addition confirmed may be directed to be deleted.*
- **Addition of Rs.80,29,000/- as unexplained Income from the sale of immovable property**
- *The National Faceless Appeal Centre (NFAC) erred in confirming the addition of Rs.80,29,000/- as unexplained income, without appreciating that, the Appellant Firm during the year has executed 28 sale agreements. However, said sale agreements are not recognized in sales as the Appellant firm has adopted a project completion method for its business and the said sales are incorporated/shown under the Work in Progress. Therefore, there is no undisclosed or unexplained income earned by the Appellant firm, and hence the addition confirmed may be directed to be deleted.*
- *Without prejudice to the above, the entire sale made during the year cannot be assessed as income of the Appellant Firm, therefore, an addition confirmed by the National Faceless Appeal Centre (NFAC) for unexplained income may be directed to be deleted.*

4. The brief facts are that the assessee is a firm engaged in the business of constructions and had not filed its return of income for the year under consideration. The Id. A.O. reopened the assessee's case vide notice u/s 148 dated 26.03.2021 pursuant to the information that the assessee had purchased immovable property for a sale consideration of Rs.2,81,63,000/- and had also sold immovable property for a consideration of Rs.80,29,000/-. The Id. A.O. sought details for the same from the assessee and it was noticed that the assessee has not made compliance during the assessment proceeding. The Id. A.O. then passed the assessment order u/s. 147 r.w.s. 144 r.w.s. 144B of the Act on 23.03.2022 on best judgment assessment, thereby determining

the total income at Rs.3,61,92,000/- after making the impugned additions u/s. 69 of the Act as 'unexplained investment'.

5. Aggrieved by the said order, the assessee was in appeal before the first appellate authority who vide order dated 14.02.2024, upheld the addition made by the Id.A.O. on the ground that the assessee has been non compliant and has failed to substantiate its claim.

6. Further to this, the assessee is in appeal before us, challenging the impugned order of the Id. CIT(A) on the above mentioned grounds.

7. The Id. Sr. Advocate for the assessee contended that the assessee was unable to comply with the proceeding before the first appellate authority for the reason that the notice of hearing was received by the Accountant and the assessee was unaware of the same. The Id. Sr. Advocate further stated that the assessee was not purposely negligent and it was beyond the control of the assessee to have not participated in the appellate proceeding before the Id. CIT(A). The Id. Sr. Advocate contended that the assessee has a good case on the merits and prayed that the issues be remitted back to the Id. CIT(A).

8. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

9. On the above factual matrix of the case, it is observed that the assessee firm has entered into a development agreement during the year under consideration and has been following project completion method. It is observed that the said project of the assessee

has not been completed for various reasons. The assessee has also proposed to file additional evidences before us vide application under Rule 29 of the Income Tax Rules, 1962. As the issues have not been decided on the merits by the Id. CIT(A) we are of the considered view that the assessee may be given one more opportunity to present its case before the first appellate authority by adhering to the principles of natural justice with the direction that the Id. CIT(A) shall admit the additional evidences proposed to be filed by the assessee and to decide the same in accordance with law. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on its side.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23.08.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 23.08.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai