

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1580/MUM/2024
(Assessment Year: 2016-17)**

Golden Rosaceae Realtors

House 83, 3rd Nizampur, Near Patel Masjid
Dandekarwadi, Bhiwandi,
Thane, Maharashtra - 421302
[PAN: AANFG6458M]

..... **Appellant**

Vs

**Income Tax Officer,
Ward 1(1), Kalyan,
Kalyan, Thane, Maharashtra**

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Piyush Chhajed
For the Respondent/Department : Mrs. Beena Santosh

Date

Conclusion of hearing : 25.06.2024
Pronouncement of order : 30.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 09/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2016-17, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 23/03/2022, passed under Section 147 read with Section 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The appellant has raised following grounds of appeal :
 1. *On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in dismissing the appeal on the basis of non-fulfillment of conditions prescribed u/s 249(4)(b) of*

the Income Tax Act without appreciating the fact that the assessee was not required to file the Income Tax return since there was no income or transactions during the relevant assessment year and hence the question of payment of advance tax does not arise as required in section 249(4)(b) of the Income Tax Act.

- 2. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in not appreciating the response filed on 16.01.2024 to the deficiency notice dated 10.01.202 which required the assessee to explain the column No. 8 & 9 of Form No. 35.*
 - 3. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in not going into the merits of the case and confirmed the addition of Rs.1,80,00,000/- Unexplained Investment, without appreciating that only Rs. 45,00,000/- had been paid balance was withheld due to the matter pending before the civil court for cancellation of conveyance deed.*
 - 4. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) e not going into the merits of the case and confirmed an addition of Rs. 76,00,000/- u/ without appreciating that section 43CA is not applicable to the assessee as the asses purchased the property for which consideration has been paid.*
 - 5. On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in not going into the merits of the case and dismissed the appeal on technical ground u/s 249(4)(b) without appreciating the fact that the conveyance deed dated 30/03/2015 had been put on hold due to a suit filed in civil court by the vendor from whom the property was purchased due to non-fulfillment of payment terms. The said payment was withheld due to objection raised by existing tenants for transfer of such immovable property.”*
3. The relevant facts in brief are that the Appellant is a partnership firm. For the Assessment Year 2016-17, the Appellant did not file return of income. As per information received from the Actionable Information Monitoring System (AIMS), the Assessing Officer got to know that the Appellant had purchased immovable property for total consideration of INR 1,80,00,000/- against market value of INR 2,56,00,000/-. Therefore, reassessment proceedings under Section 147 of the Act were initiated which culminated into the

order, dated 23/03/2022, passed under Section 147 read with Section 144 of the Act. By way of the aforesaid order, the income of the Appellant was assessed by INR 2,56,00,000/- after making addition of INR 1,80,00,000/- as unexplained investment and addition of INR 76,00,000/- as income under Section 43CA of the Act.

4. Being aggrieved, the Appellant preferred appeal before the CIT(A). However, the same was dismissed vide order, dated 09/02/2024.
5. Now the Appellant is before us challenging the order, dated 09/02/2024, passed by the CIT(A) on the grounds reproduced in paragraph number 2 above.
6. Learned Authorised Representative for the Appellant, at the outset, submitted that the CIT(A) had dismissed the Appeal on technical grounds the appeal was not maintainable as the provisions contained in Section 249(4)(b) of the Act were not complied with without examining submissions made by the Appellant on merits challenging the additions made by the Assessing Officer. It was pointed out that the Appellant was not required to file Return of Income for the relevant previous year. It was vehemently contended that provisions contain in Section 43CA of the Act did not apply in the facts of the present case since the Appellant had, admittedly, purchase the immovable property. It was further submitted that while the Appellant had entered into a Conveyance Deed on 30/03/2015, the transactions for purchase of immovable property was not completed. Subsequent to execution of the aforesaid Conveyance Deed, tenants residing at the immovable property refused to vacate the immovable property and filed a suit before the Civil Court. Therefore, the Appellant did not make payment of the balance consideration of INR 1,35,00,000/- and consequently, the Seller cancelled the Conveyance Deed. In support the Learned Authorised

Representative for the Appellant placed reliance on the copy of Conveyance Deed and civil suit filed against the Appellant. On the strength of the aforesaid, it was submitted that Appellant had a good case on merits, however, the CIT(A) had merely dismissed the appeal by invoking provisions of Section 249(4)(b) of the Act which were clearly not applicable in the facts of the present case. Learned Authorised Representative for the Appellant further submitted that during the assessment proceedings, the Assessee was not able to bring the aforesaid details/documents on record since the physical copy of the notices issued during the assessment proceedings was never served upon the Appellant on account of incomplete address stated in the aforesaid notices. Further, the Assessing Officer failed to appreciate that the Appellant did not have a digital foot print as it was not registered with the E-filing portal and therefore, even the digital copy of notices was not accessible by the Appellant. In the aforesaid facts and circumstances, the Appellant was prevented from making proper representations before the Assessing Officer. Therefore, the Learned Authorised Representative pleaded that the issue raised in the present Appeal be restored back to the file of Assessing Officer.

7. Per contra, Learned Departmental Representative opposed the submissions made by the Learned Authorised Representative for the Appellant and submitted that the Appellant was non-compliant during the assessment proceedings and, therefore, the Assessing Officer had no option but to frame a best Judgment under Section 144 read with Section 147 of the Act. As regards, the order passed by the CIT(A) is concerned, the Learned Departmental Representative supported the same and submitted that since the Appellant had not filed Return of Income for the relevant assessment year, the provisions contain in Section 249(4)(b) of the Act were clearly attracted and CIT(A) was correct in

dismissing the appeal as the Appellant had failed to pay the advance tax payable.

8. We have given thoughtful consideration to rival submissions and perused the material on record. In our view the provisions contain in Section 249(4)(b) of the Act are not attracted in the facts of the present case since the claim of the Appellant is that the Appellant was not required to file Return of Income for the relevant previous year as there was no income or transaction during the relevant previous year. According to the Appellant, for the relevant previous year, the Appellant had suffered loss of INR 5,750/- and therefore no advance tax was payable by the Appellant. Therefore, we set aside the order, dated 09/02/2024, passed by the CIT(A) and restore all the issues raised back to the file of Assessing Officer for adjudication after taking into consideration the material.
9. Further, on perusal of record, we note that the Appellant has placed on record copy of the Conveyance Deed, dated 30/03/2015, and copy of Special Suit No. 78/2018 filed before the Court of Civil Judge, Senior Division, Satara, against the Appellant which supports the claim made by the Appellant on merits. Since the aforesaid documents were not before the Assessing Officer, we deemed it proper to remand all the issues raised in the present Appeal back to the file of Assessing Officer for adjudication. Accordingly, the addition of INR 2,56,00,000/- made in the hands of the Appellant is set aside. The Appellant is directed to file before the Assessing Officer all relevant documents/details in support of its claims/contentions and co-operate in the proceedings. The Appellant is also directed to be diligent and track the assessment proceedings through Income Tax Business Application Portal and not seek adjournment unnecessarily. The Assessing Officer is directed to grant reasonable opportunity of

being heard to the Appellant. In terms of the aforesaid Ground Nos. 1, 2 and 5 raised by the Appellant are allowed, while Ground No 3 & 4 raised by the Appellant are allowed for statistical purposes.

10. In the result, the present Appeal is treated as allowed for statistical purposes.

Order pronounced on 30.08.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.08.2024
Patil, Sr.P.S.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai