

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.1351/Bang/2024
Assessment Year: 2018-19

Venkataraju Chandra Shekar #M30, 3 rd Cross, Lakshminarayanapuram Bengaluru 560 021 PAN NO : ADHPC4563G	Vs.	ITO Ward-2(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, A.R.
Respondent by	:	Sri V. Parithivel, D.R.

Date of Hearing	:	21.08.2024
Date of Pronouncement	:	28.08.2024

O R D E R

PER SOUNDARARAJAN K., JUDICIAL MEMBER:

This is an appeal filed by the assessee challenging the order of the NFAC dated 30.5.2024 for the AY 2018-19.

2. The brief facts of the case are that the AO passed order u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (in short “The Act”) based on the information received by him and additions were made. The assessee challenged the said proceedings before the NFAC/CIT(A) and contended that the assessment order by making additions are not correct and required to be interfered. The Id. CIT(A) dismissed the appeal on the ground that the assessee had not appeared in spite of several notices issued to the assessee. The assessee is challenging the said ex-parte order of the Id. CIT(A) before us. The assessee in the grounds of appeal raised the following grounds:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT [A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant especially considering the fact that the impugned assessment order was also passed u/s.*

144 of the Act under the facts and in the circumstances of the appellant's case.

3. *Without prejudice to the above, the learned CIT[A] erred in sustaining the addition of Rs.1,21,50,000/- made as short term capital gains on account of sale of two immovable properties being the gross sale consideration received by the appellant and other co-owners of the aforesaid properties under the facts and in the circumstances of the appellant's case.*

3.1 *The learned CIT[A] ought to have appreciated that the appellant was a co-owner of both the properties sold and thus, the sale consideration adopted and assessed in the hands of the appellant was excessive and liable to be reduced substantially under the facts and in the circumstances of the appellant's case.*

3.2 *The learned CIT [A] ought to have appreciated that the properties sold were long-term capital assets and therefore, the assessment of short-term capital gains on the sale of these properties was erroneous under the facts and in the circumstances of the appellant's case.*

3.3 *The learned CIT [A] ought to have allowed the appellant the benefit of indexed cost of acquisition, indexed cost of improvement and deduction u/s 54/54F of the Act that was available to the appellant under the facts and in the circumstances of the appellant's case.*

4. *The learned CIT [A] is not justified in sustaining the addition of Rs.1,35,00,000/- made u/s 69 of the Act by the learned A.O. without appreciating that the said sum of Rs.1,35,00,000/- represented the sale consideration of one of the properties sold by the appellant and other co-owners and not the amount invested in immovable property during the year under appeal under the facts and in the circumstances of the appellant's case.*

5. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded appeal and also order for the refund of the institution fees as pa*

3. At the time of hearing, the ld. A.R. filed a memo explaining the reasons for the ex-parte order passed by the ld. CIT(A) and brought to our notice that the e-mail ID given in the Form-35 is vcs201269@gmail.com, whereas, as seen from the e-filing portal, the notices were sent to a different e-mail ID i.e. csbasath2004@gmail.com. In view of the non-receipt of the notices, the ld. A.R. submitted that the assessee had not appeared before the ld. CIT(A) and hence, prayed to set aside the order.

4. On the other hand, ld. D.R. relied on the orders of lower authorities and prayed to dismiss the appeal.

5. We heard the arguments of both sides and perused the records submitted by the ld. A.R. and found that all the notices were sent to the mail ID i.e. csbasath2004@gmail.com instead of e-mail ID vcs201269@gmail.com of the assessee, which was also available in the profile of the assessee. Hence we are satisfied that there is sufficient reason available for the assessee, in not appearing before the ld. CIT(A).

5.1 We have also perused the order of the AO and found that the same is also an ex-parte order. The assessee explained that the notices sent through electronically, were not noticed by him since he was not conversant with the technology and could not check his e-mails without assistance and therefore, the AO had passed the ex-parte assessment order. The ld. A.R's contention is that the assessment order came to the knowledge of the assessee only when the assessee's A.R. logged into the e-filing portal to file an updated return. By taking into consideration of the above facts we are inclined to set aside the assessment order as well as the appeal order and remit the issue to the file of AO for de-novo consideration and pass orders after hearing the assessee.

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

Order pronounced in the open court on 28th Aug, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bangalore,
Dated 28th Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.