

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.136/Bang/2024
Assessment year : 2018-19

Asian Earth Movers, Plot No.202, 3 rd Stage, KIADB Industrial Area, Bangalore Road, Mundaragi, Bellary – 583 102. PAN : AAOFA 7327A	Vs.	The Income Tax Officer, Ward 1 & TPS, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandran, Advocate
Respondent by	:	Shri V. Parithivel, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.09.2024
Date of Pronouncement	:	24.09.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 28.11.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2018-19 on the following grounds:-

- “1. The impugned assessment order passed u/s 147 r.w.s 144B dated, 15-03-2023 is opposed to the facts of the case, weight of evidence, law applicable and the principles of natural justice; and, therefore, liable to be vacated as void.
2. The Learned CIT(A)/NFAC fell in error in dismissing the appeal in limine on the ground that tax/advance tax payable u/s 249(4) r.w.s 208 on the returned income is not paid, because:

- (i) The return of income dated, 27-04-2022 filed u/s 148 is treated as valid return condoning the delay as is seen from the e-Portal, which has been omitted to be noticed.
 - (ii) The tax payable on the income returned as per section 249(4) is NIL.
3. The impugned assessment order is bad in law and void:
 - (i) Because, mere information that immovable property of the Appellant was sold for Rs 67,67,000/- did not lead to any inference of income escaping assessment, let alone any formation of 'reason to believe', which is a condition precedent for issue of the Notice u/s 148 of the Act.
 - (ii) Because and without prejudice to the above, the alleged escapement of income did not exceed the minimum limit of Rs. 50 lakhs justifying the issue of the Notice u/s 148, since the material facts placed on record clearly demonstrated that the cost of the assets sold should be reduced from the sale proceeds of Rs. 67,67,000/- before computing the capital gain.
4. The impugned assessment order is also bad in law and void as it is passed without giving an opportunity of personal hearing through video conference, contrary to the conditions mentioned in section 144B of the Act.
5. The Learned AO erred in computing the capital gain as short-term capital gain without reducing the cost of acquisition and constructing artificial liability to tax.
6. The Learned AO erred in determining the total income at Rs. 67,16,348/- WITHOUT setting off the brought forward business loss and unabsorbed depreciation.
7. The learned AO erred in initiating the penalty proceedings u/s 270A of the Act.
8. The learned AO erred in initiating the penalty proceedings u/s 272A(1)(d) of the Act.
9. The learned AO erred in charging interest u/s 234A and 234B of the Act.

10. The Grounds are taken without prejudice to one another and the Appellant craves leave to add or delete or modify or revise any ground at the time of hearing before the Hon'ble Tribunal.”

2. Briefly stated the facts of the case are that the assessee did not file return of income u/s. 139(1) for the AY 2018-19 and from the information available it was noticed that assessee had received contract receipts of Rs.3,85,020, commission of Rs.2,31,818 and immovable property transaction of Rs.67,67,000 and accordingly notice u/s. 148 was issued after due enquiry. Initially the assessee did not respond, however it filed details on 08.12.2022, 26.01.2023 and 03.03.2023 and submitted that the assessee did not carry out any business activity and earned any income and the last return of income was filed for AY 2015-16 with a loss of Rs.2.42 crores and assessment was completed at a loss of Rs.1.95 crores. A property which was mortgaged with State Bank of India, Bellary was sold by the Bank to adjust their outstanding liability and deducted TDS. The AO noted from the submission of the assessee dated 23.02.2023 that an amount of Rs.6,16,838 (385020+231818) is disclosed in the return submitted in response to notice u/s. 148. The AO calculated undisclosed short term capital gain of Rs.67,67,000 and total income was determined at Rs.68,16,348 in the reassessment order passed on 15.03.2023.

3. Aggrieved from the above order, the assessee filed appeal before First Appellate Authority (FAA). The Id. FAA noted that assessee has not filed return of income as well as not paid the amount equal to the amount of advance tax which was payable by it and dismissed the

appeal as unadmitted and infructuous. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR reiterated the submissions made before the lower authorities and submitted that the Id. CIT(Appeals) has wrongly decided the appeal as not maintainable whereas the assessee filed return of income and screenshot of the same is placed at page 6 of the said appeal set. He also submitted that there was TDS of Rs.86,962 made and treated as tax payment by the assessee. Since the assessee had loss which was assessed in the previous assessment year in scrutiny assessment and the income has been set off towards loss, therefore there is no income for the relevant assessment year. Resultantly there is no liability for payment of any advance tax. So the Id. CIT(Appeals) has gone on wrong footing.

5. The Id. DR relied on the order of the lower authorities.

6. Considering the rival submissions, we note that the assessee filed return of income on 27.04.2022 in pursuance of notice issued u/s 148 dated 30.03.2022. Subsequently return was approved. The TDS of Rs. 86962/- was claimed in the income tax return and there is no dispute in this regard. As per return of income, there is Nil income reported. The assessee was not required to pay advance tax as alleged by the Id. FAA since as per computation submitted by the assessee there is loss, the AO has not granted cost of acquisition of the capital assets sold. Accordingly the findings of the Id. FAA is wrong and the appeal filed by the assessee is maintainable. Since the Id. FAA has

not decided the issue on merits, therefore we are remitting this issue back to the Id. FAA for fresh decision as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating his case and for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings for early disposal.

7. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 24th day of September, 2024.

Sd/-
(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th September, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.