

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1412/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

Ajit Madhukar Valsangkar, F-2, Senapati Bapat Society, Pune 411 016 Maharashtra PAN : AAQPV7929P	Vs.	ACIT, Central Circle-1(3), Pune
Appellant		Respondent

Assessee by : Shri Jayant G. Pendse &
Dr. Shantanu J. Pendse

Revenue by : Shri Amol Khairnar

Date of hearing : 30.09.2024

Date of pronouncement : 30.09.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of CIT(A), Pune-11 dated 02.05.2024 passed u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') for the assessment year 2016-17.

2. Briefly, the facts of the case are that the appellant, return of income for the A.Y. 2016-17 was filed on 28.07.2016 declaring total income of Rs.14,05,420/-. Subsequently, during the course of search

and seizure action u/s.132 conducted in the case of M/s. Dhammanagi Group, Sri Shankar Munavalli and Shri Shashishekhar Shivaji Kulkarni & others on 16.11.2015, certain incriminating material stated to be relating to the appellant were found and seized. It was found from the seized documents that 64 members of Kulkarni family have sold the property bearing R.S.No.9871/1, 971/2 & 971/3 measuring 26 acres 32 gunthas corresponding to CTS No.3928, 3929, 3929/1, 3929/2 & 2929/5 for a total consideration of Rs.77.00 crores. It was found that share of the appellant, being the family member of Kulkari family, based on the seized material is Rs.12,03,125/-. Since the appellant had not disclosed the capital gains arising on the sale of said property based on the satisfaction note recorded by the Assessing Officer of the searched party, notice u/s.153C was issued to the appellant on 21.09.2021 calling upon the appellant to furnish the return of income. In response to the said notice, the appellant did not furnish his return of income. Thereafter, notice u/s.142(1) along with a questionnaire dated 03.12.2021 was issued to the appellant calling upon him to furnish certain information and explanation on the issue. The appellant neither complied with notice u/s.153C nor notice u/s.142(1). In the circumstances, the Assessing Officer (AO) vide order dated 31.12.2021 passed the best judgment assessment u/s.153C r.w.s.144 of the Act by bringing to tax the undisclosed capital gains of Rs.12,03,125/-.

3. Being aggrieved by the above assessment, an appeal was filed before the CIT(A) who vide impugned order confirmed the action of the Assessing Officer.

4. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

5. We heard the rival submissions and perused the material on record. At the outset, we find that the assessment order was passed *ex parte* u/s.153C r.w.s.144 of the Act. From the perusal of para No.4 of the assessment order, it is evident that notice u/s.142(1) was issued by the Assessing Officer through ITBA portal, Furthermore, the appellant was issued notice on 18.12.2021 requiring the appellant to comply with notice on or before 22.12.2021, which is unreasonably short period to comply with the hearing notice. Undisputedly, the time given to the appellant for compliance is less than a week, which is against the Standard Operative Procedure ('SOP') issued by the CBDT dated 19.11.2020, wherein, minimum period of 15 days is required to be given to the assessee to comply with notices u/s 142(1) from the date of issue of the notice. The Hon'ble Delhi High Court in the case of *Dauphin Travel Marketing Private Limited vs. ITO in W.P.(C) 8870/2023 & CM Nos.33516-17/2023 dated 05.07.2023* taking note of this SOP held that the grant of insufficient time to respond the notice violates the principles of natural justice and, therefore, set-aside the assessment. Thus, it is clear that the appellant was given unreasonably very short period of time to respond to the notice, which is against the principles of natural justice. In the light of the aforementioned facts, we are of the considered opinion that it is a fit case to remand the matter to the file of Assessing Officer for *de novo* adjudication in accordance with law after affording due opportunity to the appellant.

6. In the result, the appeal filed by the appellant is partly allowed for statistical purposes.

Order pronounced on this 30th day of September, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th September, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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