

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2976/MUM/2024
Assessment Year: 2011-12**

Radheshyam S. Gupta,
5th floor, Anuradha
Satyamurty Resi, Plot No. 16,
N.S. Road, No. 11, JVPD
Scheme, Juhu
Mumbai-400049.

PAN No. AABPG 4019 L
Appellant

Vs.

Income-tax Officer, Wd-25(3)(3),
Kautilya Bhavan, Bandra Kurla
Complex,
Mumbai-400051.

Respondent

Assessee by : Mr. Prakash Jhunjhunwala
Revenue by : Mrs. Mahita Nair, Sr. DR

Date of Hearing : 31/07/2024
Date of pronouncement : 20/09/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 15.04.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2011-12, raising following grounds:



1.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in passing the appeal order ex-parte and ought to have considered the reasonable cause and compelling circumstances that had precluded the appellant to participate in the appeal proceeding;

2.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition of Short term capital gain of Rs.2,44,11,067/- on alleged transfer of lands, though the transaction did not materialise and was terminated during the impugned year itself;

3.0 The Ld. CIT(A), before confirming the addition of Short term capital gain of Rs.2,44,11,067/- ought to have considered the understated vital facts, being;

a) The property was mortgaged with SICOM and was under serious litigation and possession of lands vested with mortgager obtained under SARFAESI Act;

b) The appellant was not authorised to sell/ transfer the properties without obtaining prior permission of the Court and release of mortgage;

c) The deed of cancellation/ termination of original conveyance was executed during impugned year itself;

4.0 On facts and circumstances of the case and in Law, Ld. CIT(A) ought to have allowed the deduction of cost of acquisition of the property of Rs.2,72,59,500/-, as against considered by the AO of Rs.35,51,433/-;

5.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have directed the AO to refer the valuation matter to DVO u/s 50C(2) to determine the fair market value of the property.

2. Briefly stated, facts of the case are that the assessee did not file regular return of income for the year under consideration. Therefore, in view of the information of sale of immovable property transactions and credit card payments, available in the database of the Income-tax Department, the Assessing Officer recorded reasons to believe that income escaped assessment and accordingly notice u/s 148 of the Income-tax Act, 1961 (in short 'the Act') was issued on 27.03.2018. The said notice was duly served on the assessee



however, no compliance was made on the part of the assessee and therefore, the Assessing Officer subsequently, issued notice u/s 142(1) of the Act on various dates. However, same also remained non-complied. In view of the limitation, the Assessing Officer passed the assessment order on 29.12.2018 making addition of Rs.2,44,24,140/-.

3. On further appeal, the Ld. CIT(A) also issued various notices on 15.03.2022 to 24.02.2024. However, the assessee sought adjournment only on 05.02.2024 and no other notices were complied. Therefore, the Ld. CIT(A) upheld the order of the Assessing Officer.

4. Before us, the Ld. counsel for the assessee filed a Paper book containing pages 1 to 70 comprising of affidavit of the assessee and the supporting document justifying reasonable cause for non-compliance of the notices issued by the Ld. CIT(A).

5. The Ld. counsel for the assessee referred to ground No. 1 of the appeal and submitted that order passed by the Ld. CIT(A) is ex-parte and the assessee due to reasonable cause and compelling circumstances, could not comply to the notices. He accordingly submitted that one more opportunity might be provided to the assessee for representing its case before the Ld. CIT(A).

6. The Ld. Departmental Representative (DR) on the other hand objected for restoring the matter to the Ld. CIT(A).



7. We have heard rival submission of the parties on ground No. 1 of the appeal of the assessee. The Ld. CIT(A) issued notices for hearing on 15.03.2022, 08.09.2023, 26.09.2023, 30.01.2024 and 20.02.2024 for furnishing submissions and evidence in support of grounds of appeal. Those notices were issued through Income-tax Business Application (ITBA) system and via e-mail ID provided in the ITBA portal. The assessee only filed an adjournment on 05.02.2024 but no other documents or submissions were filed on behalf of the assessee. In the affidavit filed before us, which is available on Paper Book page 1 to 3, we find that assessee has mainly submitted that he was detained in judicial custody and later on released on bail and thereafter he was required to visit the police station, courts and advocates to handle the court matters for economic offences. Further, he has submitted that his office premises had been seized therefore, he was not having access to the documents for contesting in appeal proceedings. He has also mentioned that due to threat from the creditors and banks, he was residing at home town situated at Mirzapur, U.P. Further he submitted that the Chartered Accountant dealing with Income-tax Appeals also died on 13.04.2022. The relevant part of the affidavit of the assessee is reproduced as under:

“THAT, I could not attend the 1st Appeal proceeding related to Assessment years 2010-11 and 2011-12 and could not furnish the submissions and relevant documents before Ld. CIT(A) under the bonafide reasons and compelling circumstances beyond my control, stated as under :-



a) I was terribly disturbed and was in mental state of depression and was extremely busy in handling the Civil and Criminal litigation matters before various Court of law. I was detained in judicial custody at Arthur Road Prison for substantial period of time from 03/09/2011 to 20/03/2013 (copy attached) and later was released on bail. Presently, I am on bail. I am frequently required to visit the Police stations, Courts and Advocates to handle the Court matters for Economic Offence (EOW) (Rozanama copies attached) and therefore, I was not able to concentrate in the Income Tax matters and such had resulted in non-compliance before the 1st Appellate authority;

b) My office premise had been sealed by the Economic Offence Wing (EOW) and presently is in custody of Maharashtra Protection of Investors deposits (MPID) Court and therefore, I did not have accessibility to the documents and thus could not file the entire documents during course of assessment and appeal proceeding;

c) Further, I was facing threat from the creditors and banks and therefore, I was residing at my home town situated at Mirzapur, U.P and my non-presence in Mumbai had resulted in non-compliance before 1st Appellate authority;

d) I had handed over various documents to my regular Chartered Accountant Late Mr. Ajit B Singhvi to attend the Income Tax assessment and appeal matters. However, the said Chartered Accountant was seriously ill and he ultimately died on 13/04/2022 (copy attached). Due to non-receipt of documents from his office and non-appointment of new Chartered Accountant, I was not able to file the submissions and documents before the 1s Appellate authority. My business activities had been completely closed down and did not have any source of earnings and thus was not able to appoint a Chartered Accountant to represent before the tax authorities;

THAT, I declare that there is no wilful or deliberate attempt nor any gross negligence for my non-compliance during the 1st appeal proceedings, however such had occurred under the bonafide reasons as stated herein above.

I respectfully make a prayer before the Hon'ble Income Tax Appellate Tribunal to adopt a liberal approach and grant a final opportunity to represent the case of merits.

Solemnly declared and affirmed at Mumbai on this 30th day of July, 2024.”



7.1 We have perused the affidavit of the assessee and are of the opinion that assessee was prevented by sufficient cause in complying the various notices issued by the Ld. CIT(A). Therefore, in the interest of justice and let the appeal be decided on merit, we set aside the order of the Ld. CIT(A) and restore the matter back to him for deciding afresh. The assessee is directed to comply all the notices and file submissions along with documentary evidence required for disposal of the appeal before the Ld. CIT(A). The ground No. 1 of the appeal of the assessee is accordingly allowed. Since, we have already restored the appeal to the file of the Ld. CIT(A) therefore, we are not required to adjudicate upon the remaining grounds at this stage and therefore, same are dismissed as infructuous.

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

Order pronounced in the open Court on 20/09/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 20/09/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai