

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “K (SMC)”, MUMBAI
BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1782/MUM/2024 (A.Y: 2020-21)**

Shailesh Sundar Bhoir
Yogesh Smruti, Reti Bandar Road,
Motha Gaon, Dombivali West,
Thane – 421202.

PAN: AILPB0537A

(Appellant)

Vs. Commissioner of Income Tax,
Appeals
Ministry of Finance, Income
Tax Department, National
Faceless Appeal Centre
(NFAC), Delhi.

(Respondent)

Assessee Represented by : Shri. Rohit Kapure
Department Represented by : Shri. Dhiraj Kumar (Sr. DR.)
Date of conclusion of Hearing : 18.07.2024
Date of Pronouncement : 09.10.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 22.02.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the



“CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2020-21.

2. The matter in brief is that the assessee is an individual has filed his return of income for A.Y. 2020-21 on 31.03.2021 declaring total income of Rs. 3,64,100/-. Notice u/s. 143(2) of the Act was issued on 29.06.2021. Vide notice u/s. 142(1) dated 16.11.2021, the assessee was issued detailed questionnaire for compliance, but no reply was filed by the assessee. The assessee thereafter submitted computation of total income and sale deed on dated 02.02.2022 which was duly perused and show cause letters were issued on 11.02.2022 which was replied stating that the assessee has purchased an immovable property on 16.01.2020 for consideration of Rs. 22,50,000/- but the stamp value of the property was Rs.89,30,400/-. As a result, the assessee has failed to substantiate his claim that he has purchased his property for consideration of Rs. 22,50,000/-. Another show cause notice was issued to the assessee on 19.08.2022 seeking compliance of the same on or before 25.08.2022 but no response was filed to the said show cause notice. Hence, the Ld. AO proceeded ex-parte and computed total assessment income of Rs. 61,92,600/- and also initiated penalty proceedings.



3. Aggrieved by the said order, appellant/assessee filed an appeal before the Ld. CIT(A) which was dismissed vide impugned order on the ground that the appellant has failed to made any submissions during the course of appellant proceedings despite opportunity given. The assessee is in appeal against the said impugned order dated 22.02.2024 and has raised following grounds: -

1. *“The Learned Assessing officer has not considered the provisions of section 2(14) and explanation (d) to section 56(2) clause (vii) while applying section 56(2)(x) while passing the Assessment Order.*
2. *The transaction under consideration is purchase of Agricultural Land by the Appellant and his real brother in equal proportions. The Status of the Agricultural Land is supported by*
 - i. *7/12 extracts which are annexed to the agreement for sale wherein the fact that Agricultural activities are carried out on the said Agricultural Land*
 - ii. *Population certificate of the Gram Panchayat where the Agricultural land is situated.*
 - iii. *Distance Certificate issued by Public Works Department, Government of Maharashtra Murbad office stating that the Agricultural Land is situated at a distance of 25.50 kms from Murbad Municipal Corporation.*
3. *The Learned Assessing Officer has invoked the provisions of section 56 clause (2) sub clause (x)(b)(B) and assessed the differential amount between the ready reckoner value and agreement value as “Income from other sources”. The Appellant would like to invite attention of the Authority to the explanation given under section 56 clause (2) where in it is stated that: “Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have*



the same meanings as respectively assigned to them in the Explanation to clause (vii).”

The relevant explanation to clause vii states that:

“property” means the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;”

The Appellant would like to state that the provisions of section 56 clause (2) sub clause (x)(b)(B) are to be read with the explanation given for the said clause and not in isolation.

- 4. The Appellant would like to state that the arrangement of taxability under section 56 clause (2) sub clause (x)(b)(B) is for “Capital Asset” and not for Agricultural Land which does not constitute a capital asset.*
- 5. The Appellant states that the present transaction of purchase of agricultural land is out of the purview of section 56 clause (2) sub clause (x)(b)(B) and hence, the assessment is completed on the basis of incorrect interpretation of the Income Tax Act and hence, needs to be set aside.*
- 6. Without prejudice to the arguments put forward in clause 1 to 5 above, the Appellant would like to state that, he has obtained on record Valuation Report certified by Mr. Gandhe (Government approved valuer bearing registration no. CAT.I 3012 of 1973) wherein the valuation of the entire subject land is certified as Rs. 11,17,500/- as on the date of the transaction. The Appellant has already challenged the valuation as computed by the Deputy Registrar Murbad as the difference in the valuation report and determination of value by the Deputy Registrar is unreasonable. The Appellant states that the agreement value of the purchase of Agricultural Land is much more than the value certified by the Government approved valuer and as such the invoking of provisions of section 56 clause (2) sub clause (x)(b)(B) is unwarranted.*
- 7. The Ld. CIT Appeals has not considered the Appeal read with the supporting documents and as such has not considered the merits of the said Appeal as presented by the Assessee.*
- 8. The Ld. CIT Appeals has put more thrust on the non compliance of notices by the assessee as a misconduct of the Assessee and dismissed the Appeal without looking into the merits of the Appeal.*



Relief Claimed

1. *The Appellant prays that the present transaction of purchase of Agricultural Land, not being a capital asset, is out of the purview of the Income Tax Act and as such the assessment done by the Ld. Assessing Officer is incorrectly done and be set aside.*
2. *The Appeal of the Assessee is not considered on merits by the Ld. CIT Appeals. The Ld. CIT Appeals has passed order of dismissal of the Appeal on the basis of non compliance to the notices . The principle of natural justice in the present case was not followed by the Hon, CIT Appeals as the merits of the Appeal were not evaluated by applying the relevant provisions of the Income Tax Act.*
3. *Without prejudice to reliefs claimed in 1 and 2 above, the Appellant prays to the Hon. Appellate Tribunal to remand the matter to the valuation officer as per the provisions of section 50C of the Income Tax Act.”*
4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR at the very outset submitted that both the Ld. Authority has passed the order ex parte and has not given sufficient opportunity of hearing because the time given by the authorities for compliance of show cause notice was very limited and small and the assessee did not get sufficient opportunity for presenting his case. It is therefore argued that the impugned order suffers from the noncompliance of principal of natural justice and the impugned order is not reasoned order and is therefore liable to be set aside.
5. It is further submitted that the file may be restored to the Ld. AO and assessee/appellant be given opportunity to present his case/submissions



of the documents as the addition made is arbitrary and unwarranted. The Ld. DR on the other hand relied upon the order of the Ld. CIT(A) stating that the sufficient opportunity was given but the assessee has failed to avail the opportunities, therefore, the appeal is devoid of merit and liable to be dismissed. We have considered the submissions made on behalf of the parties.

6. Section 250 sub section 2(a) of "the Act" provides as under:

“Section 250 (2) The following shall have the right to be heard at the hearing of the appeal: -

a. The appellant, either in person or by an authorised representative;”

7. On perusal of the assessment order as well as the Ld. CIT(A) order, it is evident that both orders are ex-parte. There is no proof placed on record or mentioned in the impugned order that the notice sent by the Ld. CIT(A) or by the Ld. AO was only served upon the assessee/appellant. Moreover, time provided by Ld. CIT(A) for compliance was less than a week, which is not sufficient to constitute a sufficient opportunity. Moreover, the order of the Ld. CIT(A) is not a reasoned order which he otherwise duty bound to pass after following the principal of natural justice.



8. In view of these facts and circumstances, we are of the considered opinion that the impugned order suffers from illegality and is not legally sustainable in the eyes of law.
9. In the given facts and circumstances, the appellant/assessee needs to be given effective hearing for presenting his case for seeking deletion of the addition. The matter is accordingly restored to the file of the Ld. AO with direction to decide afresh by giving effective hearing to the assessee. The assessee shall also present his case within reasonable time before the Ld. AO as and when asked to do so by the Ld. AO.
10. In the result, appeal filed by the assessee is allowed for statistical purposes in the above terms.

Order pronounced in the open court on 09.10.2024

Sd/-
(PRASHANT MAHARSHI)
(ACCOUNTANT MEMBER)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 09.10.2024
Karishma J. Pawar, (Stenographer)



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

(Asstt. Registrar)
ITAT, Mumbai