

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1808/PUN/2024

निर्धारण वर्ष / Assessment Year : 2018-19

Anjali Sudhir Moghe, E-703, Mystique Moods, Near Dorabjee Vimannagar, Pune – 411014, Maharashtra PAN : ACVPS8822M	Vs.	ITO, Ward-7(3), Pune
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri B.S.Rajpurohit

Date of hearing : 17.10.2024
Date of pronouncement : 17.10.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the appellant directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 09.07.2024 for the assessment year 2018-19.

2. Brief facts of the case are that the assessee is an individual, filed the return of income on 30.08.2018 declaring total income of Rs.9,38,420/-. The said return was processed u/s.143(1) at the returned income. Subsequently, the case was selected for Limited Scrutiny under CASS for examination of capital gains deduction claimed. Statutory notices u/s.143(2) and 142(1) were issued requiring the assessee to furnish the explanation along with documentary proof. In response, the assessee submitted that during the previous year relevant to the assessment year under consideration, an inherited property was

sold on 28.09.2017 for sale consideration of Rs.85,00,000/-. The assessee's share was stated to be 33% out of such sale consideration. The assessee after reducing 1/3rd indexed cost of acquisition from her father, capital gain was claimed at Rs.27,88,084/-. On the basis of information provided by the assessee, the Assessing Officer noticed that the assessee purchased a property from Pride Building LLC on 07.10.2017 for Rs.38,76,696/- and claimed exemption of capital gain u/s.54 at Rs.27,88,084/-. On noticing that the assessee paid Rs.12,18,980/- to the builder within the time limit and the remaining amount is paid prior to more than one year from the date of sale of capital asset, the Assessing Officer held that assessee is eligible for exemption only to the extent of Rs.14,83,120/- (including stamp duty and registration fee) on the ground that the amount of capital gain needs to be appropriated for the purchase of a new house within a period of one year before the sale of long term capital asset or two years after the sale of capital asset. Thus, the Assessing Officer vide order dated 11.02.2021 passed u/s.143(3) r.w.s. 143(3A) & 143(3B) of the Act assessed the total income at Rs.22,43,387/- as against the returned income of Rs.9,38,420/-.

3. Being aggrieved by the above assessment order, an appeal was filed before the NFAC who vide impugned order dismissed the appeal *in limine* for non-prosecution, without going into merits of the issue.

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

5. I heard the rival submissions and perused the material on record. From the perusal of the impugned order, it is not clear that the NFAC had issued the notice(s) of hearing and also there is no proof of service of notice of hearing. In the circumstances, it can be presumed that the NFAC had passed the impugned order without giving a reasonable

opportunity of being heard to the assessee to represent the matter before NFAC and this approach of the NFAC is in gross violation of principles of natural justice. Further, the NFAC had fell in serious error by not adjudicating the issue in appeal on merits. The settled position of law mandates the NFAC to dispose of the appeal by adjudicating the issue raised in appeal on merits. In this regard, reference is being made to a decision of the Hon'ble Bombay High Court in the case of *Pr.CIT(Central) Vs. Premkumar Arjundas Luthra (HUF) Bombay*/[2017] 297 CTR 614 (Bombay) wherein it was held that NFAC is obliged to dispose of the appeal on merits. Therefore, I deem it proper to remit the matter to the file of NFAC for *de novo* disposal of the issue in appeal on merits afresh by passing a speaking order after allowing reasonable opportunity to the assessee, in accordance with law. I order accordingly.

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

Order pronounced on this 17th day of October, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 17th October, 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, "SMC" बेंच,
पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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