

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2037/PUN/2024

निर्धारण वर्ष / Assessment Year : 2015-16

Sanjay Diwakarrao Vaidya, Prerana, Plot No.17, Maya Nagar, CIDCO, Aurangabad-431 001 Maharashtra PAN : AARPV4853H	Vs.	Income Tax Officer, Ward-3(2), Aurangabad
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri Arvind Desai
Date of hearing	:	06.11.2024
Date of pronouncement	:	11.11.2024

आदेश / ORDER

PER DR.MANISH BORAD, AM:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order passed u/s.250 of the Income Tax Act, 1961 [in short "the Act"] by the Id.National Faceless Appeal Centre, Delhi [in short "Id.NFAC"] dated 31.07.2024 arising out of the Assessment order passed u/s.143(3) of the Act, dated 28.12.2017.

2. Assessee has raised following grounds of appeal :

“1. The AO has made addition stating the land was within 8Km from the municipal limits of municipal corporation.

2. Further there was investment in House Property which the AO has not taken on record.

3(a) The assessee pray to leave to add, alter, amend, modify correct and withdraw the grounds of appeal as the occasion may demand.

4(b) The assessee may please be allowed to take any additional grounds of appeal as the occasion may demand.”

3. Brief facts emanating from the record are that the assessee is an individual deriving income from business. For the year under consideration, the assessee filed the return of income on 01.04.2016 disclosing total income at Rs.1,60,630/-. Return was processed u/s.143(1) of the Act. Subsequently, the case was selected for complete scrutiny under Computer Assisted Scrutiny Selection (CASS). Statutory Notices u/s.143(2) and 142(1) of the Act were issued to the assessee on 19.09.2017 and 04.10.2017 respectively calling upon the assessee to furnish Return of Income along with Computation of income, Profit and loss account, balance sheet, Capital Account, Audit report etc. In response to notices, the assessee furnished the requisite information. Based on the details furnished by the assessee, the Assessing Officer observed that the assessee has sold the land situated at Gut No.41, Kumbhephal, Dist. Aurangabad admeasuring 1 hectare 6.56R for a total consideration of Rs.54,51,000/- vide sale deed executed on 11.07.2014. During the assessment proceedings, it was submitted by the assessee that the land sold was an agricultural land and therefore the assessee claimed exemption u/s.10(37) of the Act. The Assessing Officer asked the assessee to submit the 7/12 extract of the land, details of crop production and sale patti of agricultural goods sold, details of expenditure etc.

The assessee submitted 7/12 extract, however, stated that the assessee was not having any copies of sale patties of agricultural goods sold. Thereafter, the Assessing Officer asked the assessee to submit the produce bills/vouchers for expenditure incurred to which the assessee expressed his inability.

4. Not convinced with the explanation tendered by the assessee, the Assessing Officer issued notice u/s.133(6) to the Town Planning Officer, Municipal Corporation, Aurangabad for furnishing details of Municipal Limits from South to North and East to West of Aurangabad District as on 01.04.2014. The Town Planning Officer furnished the requisite information. Thereafter, the Assessing Officer issued another notice u/s.133(6) calling upon the Town Planning Officer to furnish the exact distance of land from the Municipal Limited, however, there was no compliance from the Town Planning Officer. The Assessing Officer deputed his Inspector to measure the road distance from the land sold by the assessee from end of the Municipal Limit. Based on the report submitted by the Inspector, the Assessing Officer arrived at conclusion that the land sold by assessee is not beyond 8kms from the Municipal limits. The land sold by the assessee is an Urban Land and therefore the assessee is not eligible to claim exemption u/s.10(37) of the Act.

5. Aggrieved assessee preferred appeal before the Id. CIT(A)/NFAC who vide impugned order dismissed the appeal

in limine for non-prosecution, without discussing anything on merits of the issue.

6. When the matter was called for, none appeared on behalf of the assessee despite due service of notice of hearing. We therefore proceed to dispose of this appeal *exparte qua* the assessee after hearing the ld. Departmental Representative.

7. Ld. Departmental Representative supported the orders passed by the lower authorities. He submitted that several opportunities were provided to the assessee to substantiate the claim which the assessee did not avail. Therefore, the authorities were justified in dismissing the appeal.

8. We have heard the ld. Departmental Representative and perused the record placed before us. We observe that the order of ld. CIT(A)/NFAC is *exparte* and there is no discussion on merits of the case. We also notice from para 4.1 of the impugned order that the assessee sought time for gathering the information. The ld. CIT(A)/NFAC dismissed the assessee's appeal without dealing with the merits even when the assessment records were available with him. Ld. CIT(A)/NFAC is required to pass a speaking order dealing with the merits of the case as contemplated u/s.250(6) of the Act which provides that for adjudicating the appeal, the ld. CIT(A)/NFAC should dispose of the same in writing and shall state the points for determination, the decision thereon and the reason for that decision.

9. Since the ld. CIT(A) has not adhered to the provisions of section 250(6) of the Act and has not passed a speaking order, we are of the considered view that the issue raised in the instant appeal deserves to be restored to the file of ld. CIT(A)/NFAC for fresh adjudication. For doing the needful reasonable opportunity has to be granted to the assessee to furnish submissions and other evidences if needed, in order to substantiate the exemption claimed by assessee u/s.10(37) of the Act. On due consideration of the same, ld. CIT(A)/NFAC shall pass a speaking order in accordance with law. The assessee is also directed to remain vigilant and not to take adjournment unless otherwise required for reasonable cause, failing which the ld. CIT(A)/NFAC shall be free to proceed in accordance with law. Finding of the CIT(A)/NFAC is set aside and Grounds of appeal raised by the assessee are allowed for statistical purposes.

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

Order pronounced on this 11th day of November, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th November, 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, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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