

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

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

आयकर अपील सं. / ITA No.1783/PUN/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Pramila Keshav Dalvi, 1, Tembwadi, Sateli Bhedshi, Sateli Traf Bhedshi B.O. Sindhudurg- 416512. PAN : BRVDPD2925A	Vs.	ITO, Kudal.
Appellant		Respondent

Assessee by : Shri Pramod S. Shingte
Revenue by : Shri Arvind Desai

Date of hearing : 11.11.2024
Date of pronouncement : 09.12.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 05.07.2024 passed by Ld. CIT(A)/NFAC for the assessment year 2013-14.

2. The appellant has raised the following grounds of appeal :-

- "1. On the facts and circumstances of the case and in law the CIT(A) erred in confirming the addition of short term capital gains ignoring submission of the appellant that:*
- a. The impugned land being rural agricultural land, gain on the same is not liable to tax.*

- b. *The appellant not having accepted the sale transaction and she having not received any consideration no capital gain is taxable in her hand.*
- c. *Impugned property being jointly owned by the appellant with others entire gain cannot be taxed in the hands of the appellant.*
- d. *The appellant ought to have been allowed deduction of indexed cost of acquisition and the capital gain ought to have been taxed as Long Term Capital Gain, if any.*

The appellant craves leave to add to, amend, alter, delete or modify all or any of the above ground of appeal or raise a new ground of appeal before or at the time of hearing.”

3. Facts of the case, in brief, are, that the assessee is an individual and did not file her return of income. On the basis of information available with the Income Tax Department that certain transactions are reported in the name of the assessee but return of income has not been filed, notice u/s 148 was issued after obtaining prior approval of the competent authority. The information suggests that the assessee has deposited Rs.56,74,000/- in her bank account. Notice u/s 142(1) was also issued but the assessee remained unresponsive. The Assessing Officer found that the assessee has sold immovable property at Rs.56,74,000/- on 06.12.2012. Since the assessee did not furnish any reply, the Assessing Officer issued notice u/s 133(6) to the Sub-Registrar requesting to furnish the registered agreement of the impugned immovable property sold by

the assessee. However, the requisite details were not supplied by the Sub-Registrar and in the absence of any response from the side of the assessee, the Assessing Officer completed the assessment *ex-parte* and treated the whole of the amount of Rs.56,74,000/- as short term capital gain on sale of immovable property and added in the hands of the assessee.

4. Since the first appeal was filed belatedly, Ld. CIT(A)/NFAC dismissed the appeal of the assessee without condoning the delay of approx two years. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing from the side of the assessee submitted before us that the order passed by Ld. CIT(A)/NFAC dismissing the appeal filed by the assessee without condoning the delay is not justified. It was submitted by Ld. AR that the effective delay was only of 17 months and 17 days in filing the first appeal. It was submitted that the assessment order was passed during Covid-19 pandemic period. It was also submitted that PAN of the assessee was not registered on e-filing portal and therefore the assessment case was transferred to Jurisdictional Assessing Officer in terms of

section 144B(8) of the IT Act after approval of Central Board of Direct Taxes i.e. CBDT. It was further pointed out by Ld. AR that the assessment case was received in the office of the Assessing Officer on 19.09.2021 and the *ex-parte* assessment order was passed on 27.09.2021 i.e. only after nine days of receiving the assessment case record. Ld. AR also submitted that the notices u/s 148 was generated on 21.02.2020 through ITBA portal but the same could not be served on the assessee since her PAN was not registered on IT Portal upto 19.09.2021. Even the show-cause notice was generated through ITBA portal on 22.09.2021 but the same could not be served on the assessee for the reasons that her PAN was not registered on e-portal. Under these circumstances, the assessee was unaware of any notices issued by the Assessing Officer and could not appear before the Assessing Officer. Ld. AR further contended before the Bench that even *ex-parte* assessment order was not received by the assessee in the year 2021. But when it came in the knowledge of the assessee, immediately first appeal was filed before Ld. CIT(A)/NFAC. Ld. AR submitted that the assessee is a widow lady of a military man and her son is also working in military and

she is residing in remote rural area and due to the second wave of Covid-19 Pandemic, the *ex-parte* order could not be received by her within time which resulted in delay in filing of the first appeal. Ld. AR also submitted that even on merit the addition is not called for since the immovable property was not sold alone by the assessee but was sold along with five others family members of the assessee. The assessment order is also challenged on this ground that whole of the consideration received on sale of impugned immovable property has been added in the hands of the assessee and no benefit of cost of acquisition/indexed cost of acquisition was allowed to the assessee. Accordingly, it was requested before the Bench to set-aside the order passed by Ld. CIT(A)/NFAC and further requested to direct him to condone the delay and decide the appeal afresh on merits of the case.

6. Ld. DR relied on the orders passed by the subordinate authorities and requested to confirm the same.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. We find that the *ex-parte* order was passed during the second wave of Covid-19 Pandemic. Even

the PAN of the assessee was not registered on e-portal, therefore, the case was transferred by CBDT from NFAC to Jurisdictional Assessing Officer on 19.09.2021. Admittedly, notice issued prior to 19.09.2021 was generated through ITBA portal could not be served on the assessee due to the fact that PAN of the assessee was not registered on income tax e-portal. Further, we also find that the assessment case was received by JAO on 19.09.2021 and *ex-parte* assessment was finalized on 27.09.2021 i.e. within a short span of nine days. It was the contention of Ld. Counsel of the assessee that the assessment order was received belatedly as the assessee was residing in remote rural area & second wave of Covid-19 was spread. The assessee happens to be a widow of military personnel whose son is also serving in military. As soon as she received the *ex-parte* assessment order she contacted to a consultant who filed first appeal belatedly before Ld. CIT(A)/NFAC. On merits of the case, it was the contention of Ld. AR that the impugned property was sold by six persons jointly including the assessee who happens to be her brothers and sisters. The copy of registered sale deed of the impugned property is also produced before us. The whole of the

consideration does not belong to the assessee but only 1/6th shares belong to her and that comes to Rs.9,45,667/- only. It was also contention of Ld. AR that the Assessing Officer has not allowed the cost of acquisition/indexed cost of acquisition as the property sold was inherited by the assessee from her Late Father prior to year 2000. Under the above circumstances and considering the totality of the facts of the case and in the interest of justice, without going into merits of the case, we deem it fit to set-aside the order passed by Ld. CIT(A)/NFAC and remand the matter back to him with direction to condone the delay and decide the appeal afresh on merits of the case as per fact and law after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notice issued by Ld. CIT(A)/NFAC in this regard and produce relevant documents/evidences in support of grounds of appeal without taking any adjourned under any pretext, otherwise Ld. CIT(A)/NFAC shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee in this appeal are partly allowed.

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

Order pronounced on 09th day of December, 2024.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th December, 2024.

Sujeet

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.