

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.1510/PUN/2024
Assessment year : 2013-14**

Chaitanya Narahari Bhosale 257, Gurukrupa Niwas, Camp Road, Vengurla, Sindhudurg – 416516 PAN: AWRPB7921Q (Appellant)	Vs.	ITO, Kudal (Respondent)
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Assessee by : Shri Pramod S Shingte
Department by : Shri Ramnath P Murkude
Date of hearing : 11-12-2024
Date of pronouncement : 11-12-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the *ex-parte* order dated 05.06.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2013-14.

2. Although a number of grounds have been raised by the assessee, however, these all relate to the *ex-parte* order of the Ld. CIT(A) / NFAC in confirming the additions of Rs.60 lakhs being the short term capital gain and Rs.5 lakh being the unexplained investment in fixed deposits made by the Assessing Officer.

3. Facts of the case, in brief, are that the assessee is an individual. Since he has not filed return of income for the impugned assessment year and NMS data available in AIMS Module of ITAB shows certain transactions, proceedings u/s

147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were initiated by issuing a notice u/s 148 of the Act. However, there was no response to the notice issued u/s 148 of the Act. The Assessing Officer thereafter issued notice u/s 142(1) of the Act, which also remained un-complied with. In view of the above, the Assessing Officer proceeded to complete the assessment u/s 144 of the Act. As per the information available with the department, it was seen that the assessee has sold the immovable property for a consideration of Rs.60 lakhs and also made term deposit of Rs.5 lakhs. He has also earned interest income of Rs.14,563/-. The Assessing Officer, therefore, completed the assessment by making addition of Rs.60 lakhs under the head 'Short term capital gain', addition of Rs.5 lakhs in 'Term deposit' u/s 68 of the Act and Rs.14,563/- as 'Income from other sources'. Thus, he computed the total income of the assessee at Rs.65,14,563/-.

4. Since the assessee did not appear before the Ld. CIT(A) / NFAC despite number of opportunities granted by him, the Ld. CIT(A) / NFAC following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another reported in 118 ITR 461 (SC), dismissed the appeal for want of prosecution.

5. Aggrieved with such order of the Ld. CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and circumstances of the case and in law the CIT(A), NFAC erred in confirming the addition made by the Assessing Officer of Short Term Capital Gains of Rs.60,00,000 not accepting submission of the appellant that land being agricultural land not falling in the definition of*

capital asset in terms of the provisions of S.2(14) any gain arising from transfer such land is not eligible to tax.

2. *On the facts and circumstances of the case and in law the CIT(A), NFAC erred in confirming the addition made by the Assessing Officer of Rs.5,00,000 representing investment in Fixed Deposits not accepting explanation of the appellant the investment being out of explained source.*

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.

6. The Ld. Counsel for the assessee at the outset submitted that the Ld. CIT(A)/NFAC has passed the *ex-parte* order for want of prosecution but has not decided the appeal on merit as per the provisions of section 250(6) of the Act. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case by filing the requisite details before the Ld. CIT(A) / NFAC.

7. The Ld. DR on the other hand referring to the order of the Ld. CIT(A) / NFAC submitted that the assessee is a persistent non-complier to the notices issued by the Assessing Officer as well as the Ld. CIT(A) / NFAC. He submitted that before the Assessing Officer there was non-compliance from the side of the assessee by not filing the return of income in response to notice u/s 148 and non-submission of the details. Similarly, before the Ld. CIT(A) / NFAC, despite five opportunities granted by him, the assessee did not comply to any of the statutory notices. Therefore, the order of the Ld. CIT(A) / NFAC sustaining the addition should be upheld.

8. We have heard the rival arguments made by both the sides and perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC. It is an admitted fact that due to non-submission of the return in response to the notice u/s 148 of the Act and non-compliance to the statutory notice issued u/s 142(1) of the Act, the Assessing Officer passed the order u/s 147 r.w.s. 144 of the Act by determining the total income of the assessee at Rs.65,14,563/-. We find due to non-compliance to the statutory notices issued by the Ld. CIT(A) / NFAC (total 5 opportunities), he was constrained to dismiss the appeal for want of prosecution. It is also an admitted fact that the Ld. CIT(A) / NFAC has not followed the mandatory requirement of the provisions of section 250(6) of the Act, according to which, the order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. It is the submission of the Ld. Counsel for the assessee that given an opportunity, the assessee is in a position to substantiate his case by filing the requisite details before the Ld. CIT(A) / NFAC. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Ld. CIT(A) / NFAC with a direction to grant one final opportunity to the assessee to substantiate his case by filing the requisite details before the Ld. CIT(A) / NFAC. The Ld. CIT(A) / NFAC shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the Ld. CIT(A) / NFAC on the appointed date and file the requisite details without seeking any adjournment under any pretext, failing which the Ld. CIT(A) / NFAC is at liberty to pass appropriate order as per

law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court at the time of hearing itself on 11th December, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11th December, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	11.12.2024		Sr. PS/PS
2	Draft placed before author	11.12.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			