

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.1177/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2012-13)

Mirza Imran Baig Hyderabad [PAN : APOPB7772D]	Vs.	Income Tax Officer Ward-13(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	None	
राजस्व द्वारा / Revenue by:	Ms.Reema Yadav, DR	
सुनवाई की तारीख / Date of hearing:	10/12/2024	
घोषणा की तारीख / Date of Pronouncement:	10/12/2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 13.07.2023 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi, relating to A.Y.2012-13.

2. The brief facts of the case are that the assessee, a salaried employee, having income below the taxable limits, sold a property along with his mother and sisters for a consideration of Rs.1,31,10,000/- and invested the resulting capital gains for acquiring a residential house at Hakimpet, Hyderabad for a

consideration of Rs.26,48,000/-. Notices u/s 142(1) and 148 of the Income tax Act, 1961 ("the Act") were issued and served on the assessee, but the assessee neither appeared nor filed complete details before the Assessing Officer. Therefore, the learned Assessing Officer passed best judgement assessment, determining the long term capital gains at Rs.13,04,050/-.

3. Being aggrieved by the assessment order, the assessee carried the matter in appeal before the CIT(A), but the assessee neither appeared nor filed any details before the Ld.CIT(A). Therefore, the Ld.CIT(A) dismissed the appeal filed by the assessee ex-parte, holding that the appellant is not interested in pursuing his appeal.

4. Aggrieved by the Ld.CIT(A) order, the assessee is now in appeal before the Tribunal. But, none appeared for the assessee.

5. The Ld.DR supporting the order of the Ld.CIT(A) submitted that the assessee was given sufficient opportunities before the lower authorities, but the assessee failed to avail the same, therefore, their order should be upheld.

6. We have heard the Ld.DR, perused the material on record and also gone through the orders of the authorities below. The assessment proceedings before the Assessing Officer are ex-parte. Although the appellant has filed certain details in response to the notice issued by the Assessing Officer, but failed to file further evidences sought by the Assessing Officer. Therefore, the Assessing Officer passed best judgement assessment u/s 144(1) of the Act and determined the total

income at Rs.13,04,050/-. Although the assessee filed appeal before the Ld.CIT(A), but neither appeared nor filed nay details, which is evident from para 4 of the Ld.CIT(A) order. Therefore, the Ld.CIT(A) dismissed the appeal of the assessee, but such dismissal is on technical ground only. It is a well settled principle by the decisions of various courts that even in the case of non- appearance of the parties, the appeals should be decided on merits, based on material available on record. Since the Ld.CIT(A) dismissed the appeal filed by the assessee for non-prosecution, in our considered view, to give one more opportunity of hearing to the assessee, the matter needs to be set aside to the file of the lower authorities. Further, since the assessment proceedings itself is ex-parte u/s 144 of the Act, instead of setting aside the issue to the file of the Ld.CIT(A), we deem it appropriate to set aside the issue to the file of the Assessing Officer. Thus, we set aside the order passed by the Ld.CIT(A) and restore the issue back to the Assessing Officer for fresh consideration. The Assessing Officer is directed to reconsider the issue 'denovo' after providing another opportunity of hearing to the assessee and decide the issue of long term capital gains in accordance with law. The Assessing Officer is also directed to reconsider the issue of penalty levied u/s 271(1)(c) and 271F denovo as per law. The assessee is directed to furnish relevant evidences before the Assessing Officer, without seeking any adjournment.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 10th December, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER
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Hyderabad, dated 10th December, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	Mirza Imran Baig, 9-4-51/35/12/7, IAS Colony, Tolichowki, Hyderabad
2	The Income Tax Officer, Ward-13(1), Hyderabad
3	The Pr.CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order