

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'SMC' BENCH, KOLKATA**

Before Shri Duvvuru RL Reddy, Vice-President (KZ)

**I.T.A. No. 1974/KOL/2024
Assessment Year: 2017-2018**

***Vertex Developers,.....Appellant
BD-150, Samarpally, Kestopur,
Kolkata-700101
[PAN:AAJFV8233F]
-Vs.-***

***Income Tax Officer,.....Respondent
Ward-40(1), Kolkata,/
Asst. Unit, NFAC,
Office of the ITO, Kolkata,
3, Government Place West,
Kolkata-700001***

Appearances by:

*Shri Rajesh Kumar Mishra, Advocate, appeared on behalf
of the assessee*

*Shri Manoj Kumar Pati, Addl. CIT, appeared on behalf
of the Revenue*

**Date of concluding the hearing: December 12, 2024
Date of pronouncing the order: December 30, 2024**

O R D E R

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25th July, 2024 passed for Assessment Year 2017-18.

2. Brief facts of the case are that the assessee is a partnership firm, which filed its return of income for the assessment year 2017-18 declaring total income of Rs.76,830/-. The appellant-assessee sold a flat and shop amounting to Rs.54,50,000/- during the financial year 2016-17, compared to the assessable /market value of Rs.69,09,200/- resulting a difference amounting to Rs.14,59,200/- (in percentage 21% approximately). As the assessee did not produce sufficient details, therefore, the ld. Assessing Officer passed the assessment order under section 147 read with section 144 and 144B of the Income Tax Act making an addition of Rs.22,11,750/-.

3. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals) with a delay of 98 days.

4. The ld. CIT(Appeals) dismissed the appeal *in limine* since the appeal is barred by limitation and since there was no response from the assessee.

5. On being aggrieved, the assessee preferred an appeal before the ITAT and raised the following grounds:-

- (1) *For that the rejection of the appeal only on the ground of time barred is illegal, arbitrary and beyond the records of the case as much as the petitioner in his appeal already explained the reasons for delay in preferring the appeal.*
- (2) *For that the appellant assessee was completely unaware of the quantum assessment order framed u/s 144 o" the Act, and initiation of subsequent penalty proceedings j/s 270A & 272A(l)(d) of the Act. The appellant assessee ca ne to aware with all such notices & proceedings when the Show Cause*

Notice of penalty proceeding manually served upon him on 02-08-2023 through the Notice Server of the Department.

The appellant assessee failed to comply with the series of notices issued by NFAC during the entire re-assessment proceeding due to the mishandling of the concerned person who look after the entire affairs in the aforesaid matter, and all of sudden without giving any intimation he has left his assignment in the month of August, 2022 forth more the E- mail Id and Mobile Number which was registered with e-portal also belongs to him. So, the appellant assessee had no knowledge about such notices, hence non-compliance from the part of appellant assessee is totally unintentional in nature and without any ill intention.

- (3) For that petitioner in his show cause reply already explained the reasons for delay in preferring the appeal and as such this is a good and sufficient cause to condone the delay in preferring the appeal. So, in view of the above circumstances we request before your honour to kindly condone the delay of 98 days (from the date of order served through the ITD portal) which is unintentional in nature for getting the natural justice in to the matter.*
- (4) That on the facts and in the circumstances of the case, the learned CIT (Appeals) [NFAC] erred in confirming the addition of Authority below of an amounting Rs. 22,11,750/- to the total Return Income of the appellant as undisclosed business income and same to be taxed as per provisions of the Act, whereas the appellant records and documents suggest the same as Rs. 14,59,200/- difference amount in between the set forth value and market or assessable value corresponding to the amount of sale of property under distress. So, the alleged sums have been added without any authentication and proper details and it cannot be treated as undisclosed business income of the appellant in any manner and ought to be deleted.*
- (5) For that on the facts & circumstances of the case, the appellant entered in to the distress sale due to the economic slowdown prevailed in that particular time and accordingly unable to find a suitable customer for disposing their allocation at reasonable market price. Hence, the Appellant assessee has decided to sale the units at discounted price in order to unlock the money invested in a project for further investment in other projects taken by them for the survival of their business. Further, this issue is well settled by various judgments of the Hon'ble Courts and tribunals that margin of error as prescribed under the act may be exceeded in case of distress sales and it can't be part*

of computation for the purpose of taxation. Hence, the entire addition on this score ought to be deleted.

- (6) *For that, on the facts and in the circumstances of the case, default of non-issue of notice u/s 143(2) of the Act is fatal to the order of re-assessment and have rendered the whole reassessment proceeding void-ab-initio being without jurisdiction. And the said issue is well settled by various judgments of the Hon'ble Supreme Court and other High Courts that in absence of notice under section 143(2) of the Act, the Assessing Officer could not assume jurisdiction and this defect cannot be cured subsequently, since it is not procedural defect but it is the defect that goes to the root of the jurisdiction.*
- (7) *For that, on the facts and in the circumstances of the case, the reassessment case has been completed by depriving the appellant assessee to file any reply of purported SCN as such SCN was not received in the physical form or by post from the NFAC Authority, further not allowed the proper opportunity of Personal Hearing through the video conferencing to present the case and defend himself which is quite wrong and against the Principle of Natural Justice.*

For further clarifications the appellant wants to rely upon the following legal pronouncements recently given by the Hon'ble High Court, Bombay in the self- same cause in the case of Mayel Steels Pvt. Ltd. Vs. Union of India, and held that; -

SCN should also be communicated via E-Mail and also should be hand delivered to the petitioner address.

- (8) *For that, on the facts and in the circumstances of the case, the Notice issued under section 148 and subsequent notices in the instant reassessment proceeding is barred by limitation and the said contention is upheld by various Hon'ble High Court's and held that the same is without jurisdiction and is in contrary to the amended provision of Section 149(1) (a) of the Income Tax Act, 1961. Hence, the whole reassessment proceeding void-ab-initio being without jurisdiction.*
- (9) *For that on the facts & circumstances of the case, the impugned assessment orders of authority below and Ld. CIT(Appeals) of NFAC is bad both on the points of law as well as on the points of facts as such void under the law. The appellant relied on a number of case laws, which he would refer to, as and when necessary during the course of hearing of this appeal.*
- (10) *For that, your petitioner prays before your honour to kindly condone the delay of 98 days and restore the appeal (from the*

date of order served through the ITD portal) which is unintentional in nature for getting the natural justice in to the matter or cancel the disputed amount of demanded Income Tax and Interest at the appellate stage by deleting the impugned addition on the basis of records and submission of appellant or Pass such other or further order or orders as to Your honour would deem fit and proper. And your Petitioner, as in duty bound, shall ever pray.

(11) *That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.*

6. I have heard both the sides. The main contention of the Id. Counsel for the assessee is that the assessee filed a condonation petition before the Id. CIT(Appeals), but without observing the filing of condonation petition, the Id. CIT(Appeals) dismissed the appeal *in limine*. Therefore, he pleaded to remit the matter back to CIT(Appeals) to examine the condonation petition filed by the assessee and pass an appropriate order on merits.

7. On the other hand, Id. D.R. submitted that the Id. CIT(Appeals) has given so many opportunities, but the assessee has not filed condonation petition. Therefore, he dismissed the appeal *in limine*.

8. I have perused the material available on record. Before me, the assessee has established that he has filed the condonation petition before the Id. CIT(Appeals), by filing acknowledgment. Therefore, considering the facts and circumstances of the case, I am of the considered view that it is a fit case to remit the matter back to Id. CIT(Appeals) to examine the reasons mentioned in the

condonation petition and dispose the condonation petition in accordance with law and dispose of the case on merit.

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

Order pronounced in the open Court on 30/12/2024.

Sd/-

(Duvvuru RL Reddy)
Vice-President (KZ)

Kolkata, the 30th day of December, 2024

*Copies to :(1) Vertex Developers,
BD-150, Samarpally, Kestopur,
Kolkata-700101*

*(2) Income Tax Officer,
Ward-40(1), Kolkata,/
Asst. Unit, NFAC,
Office of the ITO, Kolkata,
3, Government Place West, Kolkata-700001*

(3) CIT(Appeal), NFAC, Delhi;

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.