

IN THE INCOME-TAX APPELLATE TRIBUNAL “K(SMC)” BENCH,
MUMBAI

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 3328/MUM/2024
(A.Y. 2005-06)

Dhiraj Kalyanji Galal 602, Ganesh Krupa Bldg., Zaver Road, Opp. Saraswat Wadi, Mulund West, Maharashtra-400080	v/s. बनाम	Ito-28(1)(3), Room No. 327, Tower No. 6, Vashi Railway Station, 3 rd Floor, Vashi, Navi, Mumbai-400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AEGPG2849M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	None
Revenue by :	Shri Rajesh Pardeshi

Date of Hearing	07.11.2024
Date of Pronouncement	29.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Additional Commissioner of Income-tax (Appeals), Mysore [hereinafter referred to as “Addl. CIT(A)”] dated 07.11.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2005-06.

2. The assessee has raised following grounds of appeal:

“Ground - 1. The LD AO erred by treating the entire consideration of Rs. 8,00,000/- received on behalf of Mathadi Association against sale of godown belonging to them as Income from capital gains in the hands of the Appellant in spite of the fact that the appellant had only received a commission against

the said unit/godown which had been properly disclosed as Business Income in the Return of Income filed by the Appellant.

Ground 2. The Appellant crave to add, alter, amend, delete all or any of the ground of appeal any time before or at the time of appellate proceedings.”

3. The brief facts of the case are that the assessee filed original return declaring income of Rs. 1,80,125/- on 30.08.2005. Subsequently, the case was reopened and assessment u/s 143(3) r.w.s. 254 of the Act was made determining total income of Rs. 13,09,960/- after making addition on account of long term capital gains.

4. The assessee filed an appeal before Ld. CIT(A) against this order. Vide order dated 01.04.2013, the Ld. CIT(A) dismissed the assessee's appeal against which appeal before ITAT was filed. Vide order of co-ordinate bench dated 04.11.2015, the order of the CIT(A) was set aside and the matter was restored to the file of AO to consider the issue a fresh.

5. In view of the directions of the co-ordinate bench, assessment was finalized by the AO vide order dated 26.12.2017 u/s 143(3) r.w.s. 254 of the Act at an income of Rs. 11,67,960/- after making addition on account of capital gains.

The assessee filed again an appeal before Ld. Addl. CIT(A) who issued several notices to the assessee. Since no compliance was made by the assessee, Ld. Addl. CIT(A) dismissed the appeal vide order dated 07.11.2023.

Aggrieved with the said order, the assessee is in appeal before us.



6. We have perused the material available before us and heard the Ld. DR. It is seen that no compliance is being made by the assessee despite specific opportunities, and therefore, on 21.08.2024, following observations by the coordinate bench:

"1. When the appeal was listed for hearing on 13/08/2024, none had appeared for the Appellant/Assessee. The appeal was taken as heard after briefly hearing the Learned Departmental Representative.

2. On perusal of record we find that this is the second round of litigation.

3. In the first round, the Tribunal had, vide order dated 04/11/2015, set aside the order passed by the CIT(A) on 01/04/2023 whereby the CIT(A) had dismissed the appeal of the Appellant against the Assessment Order, dated 21/12/2009, passed under Section 143(3) read with Section 147 of the Act.

4. In the set aside proceedings, the Assessing Officer passed order, dated 26/12/2007, in terms of the directions given by the Tribunal vide Order, dated 4/11/2015. On perusal of the same we note that the Assessing Officer has recorded that the Appellant had failed to file reply or enter appearance in response to the notices issued by the Assessing Officer. We further note that the appeal preferred by the Appellant/Assessee against the aforesaid Order, dated 26/12/2017, passed under section 143 read with Section 254 of the Act was dismissed by the CIT(A) vide order dated 07/11/2013 on the ground that the Appellant/Assessee had failed to produce documentary evidence in support to its claim. When the present appeal preferred by the Appellant/Assessee against the aforesaid passed by the CIT(A) was called for hearing, none had appeared on behalf of the Appellant/Assessee. We note that the appeal preferred has been filled after a delay of 164 days.

5. In the interest of justice, the Appellant is granted last and final opportunity to make out a case for condonation of delay in filing the appeal and for advancing arguments on merits, in the case the delay is condoned. The Appellant is directed to file paper-book, if any, before the next date of hearing.

7. In view of the above, the present appeal is de-heard. The Registry is directed to list the present Appeal for hearing before regular bench in due course after giving notice to both the sides through RPAD and over email address stated in Memorandum of Appeal in Form No. 36."

8.

9. When the case was fixed again for hearing on 08.11.2024, no compliance was made by the assessee. The case was finally fixed for hearing on 07.11.2024 but on this date also none appeared on behalf of the assessee.



10. In view of above facts and circumstances, we have no option but to dismiss the appeal of the assessee in view continuous non-compliance. The assessee, however, is at liberty to request for recall for valid reasons.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 29.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 29.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

