

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.526/RPR/2024
निर्धारण वर्ष/Assessment Year : 2016-17

Vijay Krishna Bhandari
Mata Chowra Old Sarkanda,
Bilaspur (C.G)-495 001
PAN: AKXPB0382P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 27.12.2024
घोषणा की तारीख / Date of Pronouncement : 08.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 14.10.2024, which in turn arises from the order passed by the A.O under Sec.147 r.w.s. 144 r.w.s. 144B of the Income-tax Act, 1961 (in short 'the Act') dated 26.03.2022 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal before us:

“Gr.No.1

"On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.73,65,000 on long term capital gain on sale of land by applying sec.50C(1) without referring the matter to DVO for valuation of such land u/s.50C(2) when 'actual sale consideration' is less than the 'stamp duty value', matter is liable to be referred to DVO for valuation; action of the AO/CIT(A) without following procedure laid down in sec.50C(2) is unsustainable in law and is liable to be set aside to file of AO for referring the matter to DVO for computing its fair market value on the date of transfer, relied on Sunil Kumar Agarwal (2014) (Cal HC); Narendra Kumar Lunia (2019) (Raipur-Trib); Ram Sharan Yadav (2022) (Raipur-Trib).

Gr.No.2

"On the facts and circumstances of the case and in law, Id CIT(A) has erred in sustaining addition of Rs.73,65,000 by making ex-parte order u/s.250 dt. 14-10-24 without adjudication on merits when he has not considered the cost of acquisition of land while calculating long term capital gain on sale of land at Rs.73,65,000 u/s.45(1) r.w.s.50C(1)."

Gr.No.3

"The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing."

2. Succinctly stated, the A.O based on information that though the assessee had during the subject year sold an immovable property for a consideration of Rs.73,65,000/- but had not filed his return of income, thus, holding a conviction that the income of the assessee chargeable to tax had escaped assessment, initiated proceedings u/s.147 of the Act. Notice u/s.148 of the Act, dated 31.03.2021 was issued to the assessee. As the assessee had failed to file his return of income, therefore, the A.O proceeded with and framed the assessment to the best of his judgment u/s.144 of the Act.

3. During the course of the assessment proceedings, the A.O observed that as per information gathered from the Investigation Wing (TEP) which was flagged by DIT (systems) in insight portal on 23.03.2021, the assessee had sold the subject property for a consideration of Rs.19.06 lacs, whereas, the market value of the same was Rs.73.65 lacs. The A.O observed that the difference in the Fair Market Value (FMV) and the sale consideration disclosed in the sale deed amounted to Rs.54.59 lacs. As the assessee had failed to come forth with any explanation, therefore, the A.O held the entire amount of sale consideration of Rs.73,65,000/- as his unexplained capital gain income u/s.45 of the Act. Accordingly, the A.O vide his order passed u/s.147 r.w.s. 144 r.w.s. 144B of the Act, dated

26.03.2022 after making the aforesaid addition determined the income of the assessee at Rs.73,65,000/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded four opportunities, viz. (i) 29.07.2024; (ii) 14.08.2024; (iii) 12.09.2024; and (iv) 25.09.2024 had failed to participate in the proceedings before the first appellate authority, therefore, the latter was constrained to approve the order of the A.O and dismiss the appeal.

5. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

7. Shri Sunil Kumar Agrawal, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold, had come forth with two fold contentions, viz. (i) that there was no justification for the A.O to have held the entire amount of sale consideration of Rs.73,65,000/- as unexplained capital gain u/s. 45 of the Act; and (ii) that as there was an impugned

difference of Rs.54.59 lacs in the FMV (Rs.73,65,000/-) and the actual sale consideration (Rs.19,06,000/-), therefore, the A.O was obligated to have made a reference to the Valuation Cell before drawing any adverse inference and substituting the amount of the actual sale consideration received by the assessee by the FMV of the subject property. The Ld. AR to fortify his claim that where there is a difference between the actual sale consideration of an immovable property and the FMV/segment rate adopted by the stamp valuation authority, then, the A.O before drawing any adverse inferences is obligated to make a reference to the Valuation Cell, had relied on the judgment of the Hon'ble High Court of Calcutta in the case of Sunil Kumar Agarwal Vs. Commissioner of Income Tax, Siliguri (2015) 372 ITR 83 (Cal.). Also, the Ld. AR had drawn support from the orders of the ITAT, 'SMC' Bench, Raipur in the case of Narendra Kumar Lunia Vs. DCIT, ITA No.202/RPR/2014, dated 22.09.2016 and that of the ITAT, 'Division Bench', Raipur in the case of Ram Saran Yadav Vs. ITO, ITA No.159/RPR/2017, dated 26.07.2022. Alternatively, the Ld. AR submitted that there was no justification for the lower authorities to have held/sustained the entire sale consideration of Rs.73,65,000/- as an unexplained capital gain income in the hands of the assessee.

8. Per contra, Dr. Priyanka Patel, Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

9. Ostensibly, it is a matter of fact borne from record that the A.O based on the information received from the Investigation Wing (TEP) which was flagged by DIT (systems) in insight portal on 23.03.2021, had gathered the impugned difference vis-à-vis FMV of the subject property at Rs.54.59 lacs. For the sake of clarity, the details as were there before the A.O is culled out as under:

3. Analysis of information collected/received: Perusal of information revealed that during the year under consideration i.e. F.Y. 2015-16 relevant to assessment year 2016-17, the assessee has sold the following persons through power of attorney issued in the name of Eshan Bhandari. Further, it is also reported that there is huge difference between sale consideration and market value which clearly attracts section 50C of the Income Tax Act.

S.N.	Purchaser	Sale Consideration	Market Value	Difference Amount
1.	Smt. Saraswati Gahwai, Tilak Nagar, Chatapra, Bilaspur	6,37,000/-	26,53,000/-	20,16,000/-
2.	Smt. Tara Rathore, M/238, Bartunga Colony, Chimni	5,50,000/-	20,06,000/-	14,56,000/-
3.	Smt. Smita Kadam, Shri Vihar, Sarkanda, Bilaspur	3,94,000/-	12,56,000/-	8,62,000/-
4.	Smt. Manisha Mishra, Rathore Chahal, Sarkanda, Bilaspur	3,25,000/-	14,50,000/-	11,25,000/-
	Total	19,06,000/-	73,65,000/-	54,59,000/-

The above sold properties was found as capital asset within the meaning of Sec.2(14) of the Act and it was chargeable u/s 45 of the 'Act' in the hands of the assessee for the A.Y.2016-17. However, the assessee not has offered any Capital Gain arises from the transfer of the above quoted land. Because he has not filed his return of income for the year under consideration. Further, as per section 50C of the Act, the aggregate market value of the above mentioned sold properties are Rs. 73,65,000/- which must be taken as deemed sale consideration to compute the capital gain tax. But the assessee has failed to offer the capital gain arises in lieu of transfer of the abovementioned properties. Hence, it is clear that the assessee has not shown Capital Gain amounting to Rs. 73,65,000/- in his return of income.

Hence, Rs.73,65,000/- is treated as undisclosed Capital Gain of the assessee for the A.Y.2016-17. As the income chargeable of Rs.73,65,000/- under the head capital gain has escaped from assessment in the hands of the assessee. Hence, it is evident that the assessee has attracted the provisions of Sec.147 of the Act for the A.Y.2016-17.

10. We would mince no words in observing that the lackadaisical conduct of the assessee before the lower authorities, wherein, he had for

the reasons best known to him chosen to adopt an evasive approach and not participated before the respective authorities needs to be deprecated. Although we concur with the Ld. CIT(Appeals) that the appellate proceedings could not have been jeopardized for want of prosecution but at the same time, are unable to persuade ourselves to subscribe to the manner in which the appeal had been disposed off by him. It transpires, on a perusal of the statement of facts that were filed by the assessee before the CIT(Appeals) that he had assailed the impugned addition of undisclosed capital gain u/s. 45 of the Act of Rs.73,65,000/- for the reason that the A.O had grossly erred in treating the entire amount of sale consideration as his undisclosed capital gain u/s. 45 of the Act. We are of the view that though the assessee had not participated in the appellate proceedings, but the CIT(Appeals) ought to have adverted to the facts involved in the case before him in the backdrop of the grounds based on which the impugned addition was assailed before him and adjudicated the said respective issues vide a speaking order instead of dismissing the same for want of prosecution.

11. As observed by us hereinabove, the CIT(Appeals) had disposed off the appeal for non-prosecution and had failed to apply his mind to the issues which did arise from the impugned order and was assailed by the assessee before him. We are unable to persuade ourselves to accept the manner in which the appeal of the assessee had been disposed off by the

CIT(Appeals). In our considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of [s. 251](#) of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under [s. 246A](#) of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to

dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

12. We, thus, not being able to persuade ourselves to subscribe to the dismissal of the appeal by the CIT(Appeals) for non-prosecution, therefore, set-aside his order with a direction to dispose off the same on merits. Needless to say, the CIT(Appeals) shall in the course of the de-novo appellate proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of documentary evidence, if any. Thus, the grounds of appeal raised by the assessee are allowed for statistical purposes in terms of the aforesaid observations.

13. In the result, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in open court on 08th day of January, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 08th January, 2025.

***SB, Sr. PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT, Raipur-1 (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.