

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No. 2295/Bang/2024
Assessment Year: 2015-16

Mudigundam Srinivasamurthy Manjunath, 1296, 6 th Cross, Main, Near Puja Marketing, Vivekananda Nagar, Mysuru. PAN – AOMPM 0736 R	Vs.	The Dy. Commissioner of Income Tax, Circle – 1(1) & TPS, Mysuru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Hemant Pai, CA
Revenue by	:	Shri Subramanian, JCIT (DR)

Date of hearing	:	27.02.2025
Date of Pronouncement	:	24.04.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC Delhi dated 28-02-2024 for the assessment years 2015-16.

2. The assessee in the application filed for condonation of delay of 211 days in filing the appeal against the order passed by the learned CIT (A) submits that the delay was primarily due to non-receipt of hearing notices and appellate order, which were erroneously sent to incorrect email addresses not belonging to the Appellant. It is stated that the

correct email ID, as per Form 35 and e-filing profile, was manjunathhatti@hotmail.com, whereas communications were wrongly addressed to manjunathhatti@gmail.com and sadashivaco@gmail.com.

3. The assessee became aware of the appellate order only on 04.10.2024, when his Chartered Accountant accessed the e-filing portal while responding to a notice under section 142(1) of the Act for AY 2020-21. Subsequently, after consulting present counsel and collating necessary documents, the appeal was filed on 27.11.2024 with the delay of 211 days.

3.1 Further, it has been brought on record that the assessee has been undergoing treatment for Lymphatic Cancer since 2021, which also contributed to the delay. Supporting medical records have been placed on file. In view of the above, the learned AR prayed to condone the delay in filing the appeal before the Tribunal and decide the issue on merit of the case. On the other hand, the learned DR did not raise any objection if the delay is condoned in filing the appeal of the assessee and the matter is taken up for hearing on merit as per the provisions of law.

4. Considering the above facts, including the incorrect service of appellate order, the health condition of the assessee, and in the interest of justice and equity, we are of the view that the delay in filing the appeal was neither intentional nor deliberate. Accordingly, the delay of 211 days in filing the appeal is hereby condoned. Hence, we proceed to decide the issue on merit of the case.

5. The issue raised by the assessee though grounds Nos. 1 to 6 is interconnected and pertain to the confirmation of addition of Rs.2,27,21,046/- by the learned CIT(A) in an ex-parte order.

6. The relevant facts are that the assessee is an individual and filed return of income for the year under consideration (A.Y. 2015-16) declaring total income at Rs. 41,16,710/- only. Subsequently an information was received that the assessee along with 3 other parties has sold NA land property for a consideration of Rs. 4,91,10,780/- only. However, the AO found that the assessee in return has declared full value of consideration at Rs. 2,76,32,116/- only whereas full value of consideration stands at Rs. 4,91,10,780/- only. Accordingly, the AO was of the view that that the suppressed sale consideration to tune of Rs. 2,27,21,046/- has escaped assessment. Hence, the AO reopened the assessment vide issuing notice under section 148 of the Act.

7. The AO further found that the assessee has not filed response to the notice issued under section 148 of the Act and other notices issued thereafter under section 142(1) of the Act as well as show cause notices issued to him. Hence, the AO proceeded to frame the assessment as per the provisions of section of 144 r.w.s. 147 of the Act. Finally, the AO made the addition of Rs. 2,27,21,046/- and finalized the assessment.

8. The aggrieved assessee preferred an appeal before the National Faceless Appeal Centre Delhi (hereafter learned CIT(A)). The appeal of the assessee was dismissed by the learned CIT(A) by observing as under:

7.2. During the appellate proceedings, appellant was provided sufficient number of hearing opportunities as narrated hereinabove at para 6 of this

order to substantiate his arguments raised in the appeal memo. However, neither has the appellant attended the proceedings nor has he submitted any documents/proofs/evidences in support of his arguments raised in 'statement of facts' and 'grounds of appeal'; besides, he preferred to remain silent. Further, from the order of the AO, it is observed that such order was passed ex-parte u/s 147/144 of the Act as the assessee failed to submit his submission/reply before the AO during the assessment proceedings. Even though, appellant has submitted the documentary evidences at the time of filing of appeal in terms of Rule 46A; no such any application under Rule 46A has been filed by the appellant during the appellate proceedings despite number of opportunities as mentioned above. In view of non-submission of application in terms of Rule 46A and non-compliance during the appellate proceedings, the documents submitted during the filing of appeal do not hold their relevance and the same are held to be rejected. Further, the Hon'ble Supreme Court in the case of CIT vs. B. Bhattacharjee & Another (118 ITR 461 at page 477-478) held that the appeal does not mean, mere filing of the memo of appeal but effectively pursuing the same. In view of non-submission of explanation/documents/ evidences, during the appellate proceedings, it cannot be concluded as to how the order passed by the AO is erroneous and addition should not be made.

*7.3. In view of the above discussion, I hereby, uphold the action of the AO and confirm the addition made by the AO in the impugned Order u/s 147 rws 144 of the I.T. Act, 1961 dated 24.03.2022. Accordingly, grounds of appeal are **dismissed**.*

9. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

10. The learned AR before us filed a paper book running from pages 1 to 190 and contended that the share of the assessee in the property is limited to the extent of ₹ 2,76,32,116 which can be verified from the copy of the sale deed placed on pages 51 to 97 of the paper book and the same was duly offered to tax. Accordingly, the Ld. AR contended that the revenue authorities without considering such facts have made the addition on wrong assumption of facts. Thus, the addition made by the revenue is liable to be deleted.

11. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. The addition of ₹2,27,21,046/- made by the AO was on the ground that the assessee had understated the sale consideration arising from the sale of non-agricultural land situated at Alape village, Mangaluru Taluk. The assessment was completed ex-parte under section 147 r.w.s. 144 of the Act. It was observed by the AO that the sale deed indicated a total consideration of ₹4,91,10,780/-, whereas the assessee had disclosed ₹2,76,32,116/- as full value of consideration in his return.

12.1 However, on perusal of the sale deed documents and the reply filed by the assessee in response to notices dated 21.02.2022 and 21.03.2022 (as found at pages 21 to 30 of the paper book), it is evident that the said property was not solely owned or sold by the assessee. The sale was effected jointly by the assessee along with three other co-owners. The assessee was a confirming party in the transaction and had received only a proportionate share of the sale proceeds, amounting to ₹2,76,32,116/-, which was duly declared in the return of income and is also reflected in Form 26AS. Notably, this fact of joint ownership and proportionate receipt of consideration was also part of the very information on the basis of which the AO had initiated proceedings under section 147 of the Act. Despite being aware of this fact, the AO erroneously attributed the entire sale consideration of ₹4.91 crore to the assessee and concluded that he had suppressed income. This approach is factually and legally untenable and does not sustain.

12.2 Moreover, the assessee had filed response to the notices issued under section 142(1) prior to the passing of the assessment order, which have not been considered by the AO. These replies contain the explanation of the assessee about the declaration of the sale consideration, supporting documents such as detail of TDS deducted, sale deed extracts, etc. The failure of the AO to examine these submissions renders the assessment order erroneous and unsustainable.

12.3 As regards the appellate proceedings, it is not disputed that the assessee could not participate due to non-receipt of notices, which were erroneously sent to incorrect email IDs not linked to the assessee. The correct email ID, as per Form 35 and e-filing profile, was manjunathhatti@hotmail.com. This lapse led to an ex parte dismissal of the appeal by the Id. CIT(A), without appreciating the merits of the case or the evidence placed on record at the time of filing the appeal.

12.4 Under these circumstances, and in view of the fact that the assessee has declared income correctly corresponding to his share in the transaction, we hold that the addition made by the AO is unsustainable. The assessee cannot be taxed on the entire sale consideration when it is factually established that the sale was a joint transaction and only a part of the proceeds accrued to him. The addition of ₹2,27,21,046/- is, therefore, directed to be deleted.

12.5 We also note that although the orders of both the lower authorities were passed ex parte, the present appeal has been taken up and decided at the level of the Tribunal itself. This is in consideration of the critical health condition of the assessee, who is undergoing

treatment for Lymphatic Cancer, as substantiated by the medical records. Insisting on a remand or further proceedings would cause undue hardship. The Id. DR also raised no objection if the impugned appeal is heard on merit. Therefore, in the interest of substantial justice and to avoid prolonging litigation, we deem it fit to adjudicate the matter on merits at this stage itself. Hence, the ground of appeal of the assessee is hereby allowed.

13. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in Court on 24th day of April, 2025

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 24th April, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore