

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, NAGPUR

BEFORE SHRIPAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.418/NAG/2025
(Assessment Year :2018-19)

Sima Ravisingh Kachhawah,
Girad Road, Om Nagar
Umrer,
Nagpur- 441203
Maharastra,
PAN – AQMPK2899K

..... Appellant

v/s

Income Tax Officer
Ward-3(4), Nagpur

..... Respondent

Assessee by: Shri.D.P. Lohiya.AR
Revenue by :Shri Surjit Kumar Saha.Sr.DR

Date of Hearing – 08/10/2025

Date of Order – 09/10/2025

ORDER

The assessee has filed the appeal against the order dated 29/08/2024 passed by the CIT(A)/National Faceless Appeal Centre(NFAC), Delhi, u/sec 147 r/w sec 144 and u/sec250 of the Income Tax Act, 1961 (for short "*the Act*"). The assessee has raised the following grounds of appeal:-

"1. The order passed u/S 250 and U/s 144 of the Income Tax Act, 1961 is illegal, invalid and bad in law.

2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) (NFAC) has erred in upholding the action of the Learned AO NFAC by passing the assessment order under section 147 r.w.s.

144/144B and the consequential order under section 250 of the Income Tax Act, 1961 which are illegal, invalid and bad in law.

3. That the Ld. CIT(A), NFAC has erred in law and on facts in dismissing the appeal without adjudicating the matter on merits and without proper appreciation of the facts and submissions on record, rendering the order unjustified, unwarranted, and excessive.

4. The learned CIT(A) NFAC is not justified in concurring with the order passed by the A.O and in confirming the quantum additions and tax liability imposed, without properly appreciating the facts of the case and the grounds raised by the assessee.

5. The learned AO (NFAC) has erred in completing the assessment under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961, on 15.03.2023, without due consideration of the facts and circumstances of the case, and in raising an arbitrary and excessive demand of Rs. 9,76,265/-, rendering the assessment order unjustified, unwarranted, and bad in law.

6. On the facts and circumstances of the case the learned CIT(A) NFAC has erred in confirming the addition of Rs. 21,24,257 (Rs. 23,00,000 Rs. 1,75,743), computed as the difference between the stamp duty valuation of Rs. 23,00,000 and the cost of acquisition and transfer expenses of Rs. 1,75,743, as per the sale deed, plot layout plan and other documents submitted. The CIT(A) also erred in disregarding the deduction of Rs. 75,600 claimed under Section 80C. This addition was made despite the assessee having declared the entire transaction value/gross receipts of Rs. 33,25,470/- as turnover under Section 44AD from the real estate business in the return of income. The addition was unjustifiably made under Section 50C as Long-Term Capital Gain and the claimed deduction under Section 80C was disallowed on assumption basis. The additions confirmed are therefore unjustified, unwarranted and excessive.

7. On the facts and circumstances of the case the learned CIT(A) NFAC as well as the learned AO have erred in law and on facts by not accepting the real estate (plots) business declared under Section 44AD without any prior inquiry, or independent verification of the business activity and failed to accept the total taxable income of Rs. 4,04,500 declared by the assessee in the regular course of business, and wrongly confirmed an addition of Rs. 21,24,257 under Section 50C as long-term capital gain. The assessee had already disclosed the entire transaction value of sales, amounting to Rs. 10,25,470 plus Rs. 23,00,000 (stamp duty valuation), in the return of income filed in response to notice under Section 148, therefore the addition confirmed by the CIT(A) NFAC is illegal, invalid and bad in law.

8. On the facts and circumstances of the case the learned CIT(A) NFAC as well as the learned AO has erred in not accepting the real estate business declared under Section 44AD without any basis or independent

verification, and in addition of Rs. 76,500/- by disallowing the deduction claimed under Section 80C, which was duly disclosed in the return of income. The addition confirmed by the CIT(A) NFAC in the absence of any supporting documents is therefore is illegal, invalid and bad in law.

9. On the facts and circumstances of the case the learned CIT(A) NFAC erred in disregarding the contention of the assessee and relying solely on the conveyance deed and disallowed the deduction U/s 80C, which amounts to Rs.21,99,857/-confirmed as addition without going into the facts and grounds of appeal of the case and taxed in the hands of the assessee under deeming provisions and also initiated the penalty proceedings U/s 270A(9) & U/s 272(1)(d), therefore order passed is unjustified, unwarranted and excessive.

10. On the facts and circumstances of the case and in law, the learned CIT(A)NFAC is not justified in upholding the addition made by the AO solely on the basis of the stamp duty valuation adopted in the conveyance deed under deeming provisions, without examining the actual facts of the case, conducting any prior enquiry, or carrying out independent verification. The addition was made without any material evidence against the assessee, despite the fact that the sales were effected in the regular course of the Assessee's real estate business. Therefore, it is most respectfully requested that the contentions of the assessee be accepted and the addition be deleted.

11. On the facts and in the circumstances of the case and in law the learned CIT (A) NFAC erred in confirming the addition made under Section 50C by the Assessing Officer while dismissing the grounds of appeal, without properly following the binding judicial pronouncements of the Hon'ble High Courts and the ITAT.

a) The Honorable ITAT, Nagpur Bench, in the case of Vijaya Vinod Duragkar Vs ITO, dated 18.11.2024, Nagpur Bench ITA 339/Nag/2023 took a view that the reopening of assessment was invalid, and consequently, the reassessment order passed pursuant to such reopening was also invalid, unjustified, and bad in law. The Tribunal quashed the reopening proceedings as well as the assessment order, observing that once the reopening is held to be void, the resulting assessment cannot survive

b) The Honorable Bombay High Court, Nagpur Bench in the case of GandhibagSahkari Bank Ltd Vs DCIT& Ors Bombay High Court, Nagpur Bench, dated 25.09.2023 WP 3177/2022 took a view that we find that the Assessing Officer in absence of any independent verification of the information available on the Insight Portal has proceeded to re-open the completed assessment without indicating the basis for having a reason to believe that the information in the hands of the petitioner had escaped assessment.

12. On the facts and circumstances of the case and in law, the Ld. AO (NFAC) presumed and added the amount of Rs. 21,24,257/- as long term capital gain under deeming provisions despite the fact that the amount pertained to regular real estate business activity. The basis of the assumption is not only arbitrary but also totally irrational having no nexus with the supporting evidences submitted by the assessee during the course of the proceedings before the authorities.

13. On the facts and circumstances of the case or in the law, the assessee is aggrieved by the order passed by the CIT(A) under section 250 of the Act. The said order is unwarranted and unjustified, having been passed without considering the Assessee's requests or examining the merits of the case.

14. On the facts and circumstances of the case and in law, the Learned CIT(A) NFAC has erred in law and not adjudicating the grounds of appeal. Further, the Learned AO, NFAC, wrongly initiated penalty proceedings under Section 270A(9), and charged interest under Sections 234A and 234B, along with fees under Section 234F of the Act for non-filing of the income tax return under Section 139(1). The same shall be deleted.

15. The learned CIT (A) NFAC has erred in law and acted unjustifiably by confirming the addition made by the Assessing Officer without conducting any independent verification, without properly considering the provisions of law, and without affording the assessee a fair opportunity of being heard, thereby violating the principles of natural justice and rendering the order void ab initio.

16. That each grounds of appeal are mutually exclusive & without prejudice to each other.

17. The assessee prays for appropriate relief based on the said grounds of appeal and the facts and circumstances of the case.

18. The assessee further prays for leave to add, alter, amend and/or modify any of the grounds of appeal at or prior to the hearing of the appeal.

19. In the interest of the justice, it is most humbly prayed that the said grounds of appeal may kindly be admitted and adjudicated and the Hon'ble Tribunal may decide the matter on merits after providing the assessee a full and fair opportunity of hearing."

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay of 244 days in filing the appeal before the Hon'ble Tribunal and the assessee has filed an application and affidavit for condonation of

delay explaining the sufficient cause. Whereas the facts mentioned in the Affidavit are reasonable and the learned D.R. has no specific objections. Accordingly, the delay is condoned and the appeal is admitted.

3. The Brief facts of the case are that, the assessee has filed the return of income for the assessment year 2018–19 on 30/08/2018 disclosing a total income of Rs.4,10,160/-. Subsequently, the Assessing Officer has received information from the Insight portal under the category High Risk CRIU/VRU information. During the F.Y. 2017–18, the assessee has sold immovable property for a sale consideration of Rs.6 lakhs whereas the market value of the property is Rs.23 lakhs. The Assessing Officer has reason to believe that the income has escaped assessment and issued notice u/sec 148 of the Act. In compliance, the assessee has filed information substantiating the claim in the return of income mentioning that the assessee has acquired the property in the earlier years and subsequently over a period, property was developed and advances were received in earlier years and during the F.Y. 2017–18 i.e A.Y.2018-19 the property was registered as per the actual sale consideration received by the assessee. Prima–facie, the assessee’s contentions in the assessment proceedings are that the assessee was carrying on plotting business i.e purchase land and developing the plots and subsequently sold to the parties and the assessee was offering the business income u/sec44AD of the Act. Whereas, the Assessing Officer is of the view that income has to be taxed as long term capital gains. The assessee has filed detailed

reply on various dates referred in the Para-4.3 of the assessment order. Whereas the Assessing Officer was not satisfied with the explanations and information and treated the transaction as sale of capital asset and computed long term capital gains based on the market value and made addition of Rs.21,24,257/- and similarly disallowed the claim u/sec80C of the Act of Rs.75,600/- and assessed the total income of Rs.26,04,260/- and passed the order u/sec147r.w.s.144 r.w.s.144B of the Act dated 15/03/2023. Aggrieved by the order, the assessee has filed the appeal before the CIT(A).

4. In appellate proceedings, the CIT(A) has considered the grounds of appeal, statement of facts, findings of the Assessing Officer and issued notices of hearing on various dates. Since there was no compliance to the notices by the assessee, the CIT(A) considering the information on record has confirmed the action of the Assessing Officer and dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A), the assessee has filed appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Id A.R. for the assessee submitted that the CIT(A) has erred in sustaining action of the assessing officer overlooking the submissions filed in the assessment proceedings and the assessee is engaged in the real estate business and adopted the provisions u/sec44AD of the Act. Further, the Ld.AR submitted that the assessee has a good case on merits and prayed for an opportunity to substantiate

the claim with material evidences and information before the lower authorities. Per-contra, the learned Departmental Representative supported the order of the CIT(A).

6. Heard the rival submissions and perused the material available on record. The CIT(A) has dismissed the assessee's appeal, as there was no compliance to the notices issued in the appellate proceedings on various dates referred at Para 4 of the order. Further the CIT(A) is of the opinion that the assessee is not interested in prosecuting its appeal and has confirmed the action of the Assessing Officer. Whereas, the learned A.R., in the course of hearing, submitted that the assessee has a good case on merits and shall substantiate with material evidences before the authorities. Whereas, the assessee has raised grounds of appeal challenging the action of the assessing officer. There could be various reasons for non-compliance by the assessee which cannot be ruled out. Hence, considering the facts, circumstances, submissions of the learned A.R and to meet the ends of justice, the assessee should be provided one more opportunity for hearing. Accordingly, the order of the CIT(A) is set aside and restore the entire disputed issues to the file of the Assessing Officer to adjudicate issue afresh on merits and the assessee should be provided adequate opportunity of hearing and the assessee should co-operate in submitting the information. And the grounds of appeals of the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 09/10/2025

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur