

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No. 798/Mum/2023  
(Assessment Year: 2011-12)**

Arun Moreshwar Patil, G-2, Bhayandarkar Sadan, Ghratan Pada No.2, Sant Mirabai Road, Dahisar (East), Mumbai-400068.	<b>बनाम/ Vs.</b>	ITO-32(1)(2), Pratyakshkar Bhavan, C-11, Room No.204, 2 <sup>nd</sup> Floor, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AODPP8017R</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri Roshan Patil.AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Anil Gupta.DR

सुनवाई की तारीख / Date of Hearing	22/05/2023
घोषणा की तारीख /Date of Pronouncement	23/05/2023

आदेश / ORDER

**PER PAVAN KUMAR GADALE - JM:**

The assessee has filed an appeal against the order of Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”] passed under section 250 of the Income Tax Act, 1961 (“the Act”) for the Assessment Year (“AY”) 2011-12. The assessee has raised following grounds of appeal:-

1. *"On the facts and in the circumstances of the case and in law, the proceedings initiated u/s 147 by issuance of notice u/s 148 of the act is invalid and bad in law.*

2. *On the facts and in the circumstances of the case and in law, the order passed u/s. 143(3) r.w.s. 147 of the IT Act is invalid and bad in law.*
3. *On the facts and in the circumstances of the case and in law, the learned A.O. erred in determining the capital gains at Rs.39,66,775/- and the learned C.I.T.(A) further erred in approving the same.*
4. *Without prejudice to ground numbers 1 to 3, and on the facts and in the circumstances of the case and in law, the learned A.O. erred in adopting Rs.4,19,59,500/- as sale consideration for computing the capital gains income and the learned C.I.T.(A) further erred in approving the same.*
5. *Without prejudice to ground numbers 1 to 3, and on the facts and in the circumstances of the case and in law, the learned A.O. erred in adopting the cost of acquisition at Rs. Nil /- and the learned C.I.T.(A) further erred in approving the same.*
6. *On the facts and in the circumstances of the case and in law, the learned A.O. erred in charging an amount of Rs.29,955/- as interest u/s 234A of the act.*
7. *on the facts and in the circumstances of the case and in law, the learned AO erred in charging an amount of Rs.5,57,163/- as interest u/s 234B of the Act.*

*The appellant craves leave to add, alter, amend and/or delete any or all of the grounds of appeal.”*

2. The Brief facts of the case are that, the assessee is an individual and as per information received from NMS module of ITD, the assessee has sold immovable property. The Assessing Officer ("AO") found that the assessee along with other co-owners has sold plot of land and the capital gains on sale of property was not offered to tax. The AO has reason to believe that the income has escaped the assessment and therefore, issued notice u/s 148 of the Act. In compliance to notice, the assessee has filed return of income for AY 2011-12 on 02.08.2018 disclosing a total income of Rs.71,171/-. Subsequently, notice u/s 143(2) and U/sec 142(1) of the Act was issued and the assessee was also provided reasons for re-opening the assessment. Whereas the AO has dealt on the facts that the assessee has sold the plot of land along with co-owners for a consideration of Rs.1,05,74,128/- vide agreement dated 21.08.2010 and whereas the market value adopted by Sub-Registrar at Rs.4,19,59,500/- and the assessee has failed to disclose the transaction in the return of income filed. In response to the notice, the Ld.AR of the assessee appeared and submitted the computation of income disclosing capital gains at Rs.NIL. It was explained that the assessee has 12.65% of share in the immovable property and the sale consideration received to his share is Rs.13,37,367/- and index cost of acquisition claimed of Rs.5,56,578/-.

3. Whereas, the AO was not satisfied with the explanations and dealt on the provisions of section 50C of the Act and has

issued a show cause notice to the assessee. Whereas in response to the show cause notice, the assessee has filed a letter dated 31.10.2018 and has requested the AO to refer to the District Valuation Officer (DVO) as there is difference in the value of agreement and the stamp duty value adopted by the SRO and the applicability of provisions of section 50C of the Act. The A.O has referred to the DVO u/s 55A & 55C of the Act for determination of value of the property. Since the valuation report is not furnished by the DVO and the time barring date is approaching, the AO has completed the assessment on protective basis subject to outcome of the report of DVO with reference to the market value of the property on the date of transfer. Finally, the AO has computed the Long Term Capital Gain ("LTCG") applying the provision of section 50C of the Act and determined the assessee's share at Rs.39,66,775/- and assessed the total income of Rs.40,37,950/-and passed the order u/s 143(3)r.w.s147 of the Act dated 04.12.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 3 Para 4 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and also the A.O has made reference to D.V.O for valuation of the property and the valuation report was not received before the completion of assesseeement. And there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of

the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 23.05.2023.

**Sd/-**

**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated 23/05/2023  
\*Amit Kumar, Sr. PS\*

**Sd/-**

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai