

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No.2613/Mum/2023
(Assessment Year: 2011-12)

Smt. Rakhmabai Mhatre
Mukkam Bhalgaon,
Post Dural,
Tal Ambernath, Kalyan,
Maharashtra - 421 501

Income Tax Officer
Ward 2(3)
Rani Mansion,
Vs. Murbad Road, Kalyan,
Maharashtra 421 301

(Appellant)

(Respondent)

PAN No. BJAPM0977J

Assessee by : Ms. Apurva Hire, Advocate
Revenue by : Smt. Mahita Nair, Sr. DR

Date of hearing:	30-01-2024
Date of pronouncement :	31-01-2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. This appeal is filed by Smt. Rakhmabai Mhatre [Assessee / Appellant] against the appellate order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [Ld. CIT(A)] dated 31.5.2023 for Assessment Year 2011-12, wherein the appeal filed by the Assessee against the assessment order dated 27.12.2018 passed by the Income Tax Officer, Ward 2(3) (Ld. AO) under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) computing the total income of the Assessee as Rs.33,40,374/-, was dismissed.



2. Assessee has preferred an appeal raising following grounds:-

i) That, the impugned order dated 31/5 / 2023 issued U / s 250 is passed against the basic principle of natural justice and audi alteram partem, since appellant was never informed about hearing before NFCA by previous authorised representative.

ii) That, all the emails of notice hearing were received by previous authorised representative, who never informed appellant about hearing, consequently appellant was precluded from participating in appellate proceedings.

iii) That, in consequence of impugned order dated 31/5 / 2023 intrinsically following additions were upheld by Id. NFAC made by AO vide assessment order dated 27/12 / 2018:

a) Addition on account of capital gains amounting to Rs.31,85,497/-, by assuming sale consideration U / s 50C of the Act amounting to Rs.64,64,010/-.

b) That, it is submitted that land in question, which was sold by appellant during the AY under consideration is agricultural land and was exempted for being tax under tax laws.

3. The brief fact of the case shows that the Assessee is an individual. She does not file any return of income. The information was received that the Assessee has sold immovable property at Rs.1,28,83,000/- jointly with two other persons who did not offer any capital gain. Further, it was also found that Rs.17 lakhs have been deposited in her bank account. Therefore, notice under section 148 of the Act was issued on 27.3.2018. Further notice under section 142(1) of the Act was also issued on 12.7.2018. The CA of the Assessee



submitted a letter dated 13.11.2018 stating that the Assessee is a homemaker and all financial transactions were controlled by her husband. It was further stated that the property was sold in financial year 2010-11 but offered for taxation in assessment year 2012-13. The Assessee also filed return of income for assessment year 2011-12 on 13.11.2018 in response to notice under section 148 of the Act. The Ld. AO noted that the Assessee along with two other persons has sold property for a stamp duty value of Rs.1,28,83,000/- at survey No.27, Taluka-Ambarnath, where the sale consideration was stated to be of Rs.71,51,300/- causing the difference of Rs.51,31,700/- and such property was acquired in 1981-82 having index cost of acquisition of Rs.32,78,513/-, should have offered capital gain of Rs.31,85,497/-. The Assessee was issued a show cause notice.

4. The Assessee submitted that the sale of land is related to an agricultural land situated within the specified limit from the council area of Ambarnath and agricultural activities were carried out at the time of sale of land. Due to undeveloped location as compared to the urban area, the value of the land has to be considered as agricultural land only. It was further stated that it does not have any other facilities compared to urban land. The Assessee also stated that the rate of agricultural land would be Rs.5880/- per guntha as per the value ready reference book and therefore stamp duty rate cannot be taken. It was further stated that value done at the time of registration is also taken random rates instead of proper computation of slab rates as applicable.
5. The Ld. AO rejected the contentions of the Assessee stating that the land is an agricultural land as it is situated within the



specified limit and he also rejected the conditions that the stamp duty is paid at the random rates. The Ld. AO was of the view that these steps of rectification of stamp duty rates should have been corrected during the registration period only. Therefore, he invoked the provision of Section 50C and computed the long term capital gain as Rs.31,85,497/- and passed an assessment order under section 143(3) r.w.s. 147 of the Act on 27.12.2018, detaining total income of Rs.33,40,374/-.

6. The Assessee aggrieved preferred the appeal before The Ld. CIT(A) issued notice on 7.1.2021 and 9.11.2021 which were not replied to. He further issued a notice on 21.7.2022, 5.8.2022 and 16.5.2023 which were also not replied to and therefore he dismissed the appeal without discussing the merits of the case. The Assessee aggrieved has preferred this appeal.
7. We have heard the rival contentions and perused the orders of the lower authorities. Ms. Apurva Hire Id AR vehemently contended that addition is incorrect and the Ld.DR supported the orders of the lower authorities.
8. Facts clearly shows that the Assessee has sold the property for a sale consideration of Rs. 71,51,300/- whose deemed market value is Rs.1,28,83,000/-. The Ld. AO invoked the provision of Section 50 C of the Act whereby the full value of the consideration was to be used for computation of capital gain by deeming the



sales value by the stamp duty rates. Before the Ld. AO, the Assessee objected the same. The claim of the Assessee that though it is situated in the specified area but it is used for agricultural activities and the stamp duty rates are random rates. The Assessee also objected that the surrounding area does not have any facilities compared to urban area and therefore, stamp duty rates cannot be considered as deemed consideration. According to the provision under section 50(C)(2), if the Assessee objects before the Ld. AO that the values were adopted by the stamp value authorities exceeds the fair market value of the property, the Ld. AO is duty bound to refer the value to the valuation officer. Instead of following the mandate of section 50(c)(2) of the Act, the Ld. AO has computed the capital gain by adopting the stamp duty value. This is not in accordance with the provision of law. Further, the Ld. CIT(A) should have also decided the appeal on the merits of the case where the facts clearly shows that the Assessee objected to such valuation. Though it is clear despite repeated notices, the Assessee did not appear before the Ld. CIT(A), despite the fact the Ld. CIT(A) should have considered the facts available in the assessment order itself. In view of the above, we find that the orders of the Lower authorities are not sustainable. Accordingly, we restore the matter back to the file of the Ld. AO to follow the mandate of provision under section 50(C)(2) of the Act and decide the issue afresh after giving the Assessee an adequate opportunity



of hearing. Accordingly, grounds No.1 to 3 of the appeal of the Assessee are allowed with above directions.

9. In the result, the appeal of the Assessee is allowed as directed for statistical purposes.

Order pronounced in the open court on 31.01.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2024

Mini Pawar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai