

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.1120/Bang/2023
Assessment Year : 2018-19

Shri. Shamanna Reddy, C/o. Chowdeshwari Rice Building, Opp. Hi Look Bakery, Kasavanahalli, Sarjapur Road, Bengaluru – 560 035. <b>PAN : CCWPR 8342 E</b>	Vs.	ITO, Ward – 4(1)(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Siddesh Nagaraj Gaddi, CA
Revenue by	:	Dr. Nischal, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.02.2024
Date of Pronouncement	:	20.02.2024

**ORDER**

*Per George George K, Vice President:*

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 28.11.2023, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The grounds raised read as follows:

1. *The impugned order passed by the Learned CIT(A) and AO, to the extent prejudicial to the Appellant, is not justified in law and on the facts and circumstances of the case.*

2. *The Learned CIT(A) has erred in law and on facts in passing the order against the principles of natural justice.*
3. *The Learned CIT(A) has erred in law and on facts in stating that the provisions of section 249(4) of the Act are applicable to the facts in the present case.*
4. *The Learned CIT(A) has erred in law and on facts in not passing the order in accordance with the provisions of section 250(4)/(6) of the Act.*
5. *The Learned CIT(A) has erred in law and on facts in not appreciating that the order is AO is bad in law and on facts as it is without jurisdiction.*
6. *In the absence of proper service of notice/order, the impugned reassessment order is bad in law and against the principles of natural justice.*
7. *The action of learned AO is not justified in serving the notice under sections 148A & 148 for initiating the re-assessment proceeding, as the said notices were not in accordance with section 282 of the Income-tax Act, 1961 read with rule 127 of the Income-tax Rules.*
8. *The learned CIT(A) and AO has erred in initiating the re-assessment proceeding u/s. 148 which is based on the incorrect assumption that the appellant had sold non-agriculture land.*

***Addition of Rs. 52,99,000/-***

9. *The Learned CIT(A) and AO have erred in law and on facts in making an addition of Rs. 52,99,000/-.*
10. *The learned CIT(A) and AO have erred in making the addition of Rs. 52,99,000/- being the long-term capital gains, as the appellant had sold an agriculture land bearing no. Sy. No. 63/4, situated at Samanahalli Village, Sarjapura Hobli, Anekal Taluk, Bangalore is not liable for tax since the parcels of agricultural land sold do not fall under the category of "Capital Asset" as defined under section 2(14) of the Income Tax Act and it is outside the purview of the IT Act.*

***Common grounds***

11. *The Learned CIT(A) and AO should have obtained the required information by invoking the provisions of section 133(6) of the Act.*
12. *The purpose of assessment is to determine the correct income; the Learned CIT(A) and AO have erred in law and on facts in not appreciating the same and proceeding ahead with the sole intention of making an addition to the returned income.*
13. *The impugned adjustments being merely based on presumption and surmises are to be deleted.*
14. *The order is unreasonably high-pitched for liable to be quashed in its entirety.*
15. *The actions of the Learned CIT(A) and AO are contrary to the provisions of the Act, facts of the case, arbitrary and without any application of mind.*
16. *The Learned CIT(A) and AO have erred in raising demand vide issue of notice under section 156 of the Act.*
17. *The Learned CIT(A) and AO have erred in law by levying interest under section 234A/B of the Act.*

*(Total tax effect: Rs. 24,58,377/-)*

3. Brief facts of the case are as follows:

Assessee is an individual. For the Assessment Year 2018-19, assessee did not file return of income. As per the information received by the Department, assessee had sold an immovable property for Rs.53 lakhs. Based on this information, proceedings under section 148A of the Act was initiated and show cause notice under section 148A(b) of the Act was issued. As there was no response to the show cause notice issued, Order under section 148A(d) of the Act was passed treating it as a fit case for issue of notice under section 148 of the Act. Notice under section 148 of the Act was issued on 31.03.2022. Since there was no response to the several notices issued, assessee was show caused as to why the

Assessment Order ought to not to be completed under section 144 of the Act. Since there was no response to the same, assessment was completed under section 147 r.w.s. 144 r.w.s. 144B of the Act vide order dated 21.03.2023. In the said Assessment Order, long-term capital gain was determined on sale of property. Accordingly, a demand was issued for a sum of Rs.24,58,377/-.

4. Aggrieved, assessee filed appeal before the First Appellate Authority. The CIT(A) dismissed the appeal of the assessee on technical grounds by invoking the provisions of section 249(4) of the Act. The relevant finding of the CIT(A) reads as follows:

*“In the reply the appellant has sought adjournment on the ground that written submission could not be prepared as his counsel is unavailable due to festive season. He requested for 30 days adjournment. The appellant is seeking time for submission of written submission whereas by that notice the appellant was asked if he had paid an amount equal to the amount of advance tax which was payable by it. It is noticed from this reply of appellant that he has nothing to contradict the information provided by him at sl. no. 9 of Form-35 and to prove that it has made payment of amount equal to the advance tax which was due on its income. It is, therefore, clear that information, given at sl. no. 9 of Form-35 is correct and the appellant has not made payment of amount equal to the advance tax which was due on its income.*

*Since the appellant has not filed return of income as well as not paid an amount equal to the amount of advance tax which was payable by it, present appeal is not liable to be admitted. The appeal is infructuous and is, therefore, dismissed.”*

5. Aggrieved by the Order of the CIT(A), assessee has filed the present appeal before the Tribunal. The assessee has filed a Paper Book enclosing therein written submissions filed before the CIT(A), the case laws relied on, statement of the total income, etc. The learned AR submitted that assessee is a senior citizen. It was submitted that due to assessee's health issues and limited education, he faced difficulty in understanding and effectively participating in income tax

proceedings. Therefore, it was submitted that assessment was passed under section 147 r.w.s. 144 of the Act. As regards the CIT(A) dismissing the appeal of the assessee, the learned AR submitted that assessee's total income is only Rs.13,296/- and therefore there is no question of payment of "admitted tax", hence, section 249 of the Act cannot be invoked to dismiss the appeal of the assessee on technical ground. Learned AR has also placed reliance on the Order of the Tribunal in the case of Annapoorneshwari Investment Vs. DCIT in ITA No.99/Bang/2016 (order dated 26.04.2019).

6. Learned DR supported the orders of the AO and the CIT(A).

7. We have heard the rival submissions and perused the material on record. Assessee is a senior citizen aged 65. Considering the age and education background as well as the procedure under the faceless regime coupled with the fact that notice issued during the course of assessment proceedings were not served as per the prescribed mode, we are of the view that the ex-parte order passed on the assessee under section 147 r.w.s. 144 of the Act is to be condoned.

8. However, before the CIT(A), assessee had made detailed submissions. The CIT(A) has dismissed the appeal of the assessee by invoking section 249(4)(b) of the Act. Assessee submitted that he is not liable for long-term capital gains since the property sold was agricultural land. Assessee has also placed on record the computation of statement of total income. On perusal of the same, it is seen that the total income for the relevant Assessment Year of assessee is Rs.13,296/-. Therefore, there is no question of payment of admitted tax. In view of the above, section 249(4) of the Act cannot be invoked to dismiss the appeal of the assessee. We also place reliance on the Order of the Tribunal in the case of Annapoorneshwari Investment Vs. DCIT (supra) wherein it has been held that in terms of section 249(4)(a) of the Act, stipulation as to payment of tax ante filing

of first appeal is only directory and not mandatory, where appeal is filed without payment of tax but subsequently required amount of tax is paid, appeal shall be admitted on making payment of tax and taken up for hearing on merits.

9. In the present case, as mentioned earlier, we find assessee had not declared any admitted tax. On the facts of the instant case, assessee had claimed the receipt is for sale of agricultural land and not liable for capital gains. Since assessment has been completed under section 147 r.w.s. 144 of the Act, we are of the view that the matter needs to be examined afresh by the AO. Accordingly, the issues raised in this appeal are restored to the files of the AO. Assessee is directed to cooperate with the Revenue and shall not seek unnecessary adjournment in the matter. The AO is directed to afford reasonable opportunity of hearing to the assessee. It is ordered accordingly.

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

*Pronounced in the open court on the date mentioned on the caption page.*

**Sd/-**

**(CHANDRA POOJARI)**  
**Accountant Member**

**Sd/-**

**(GEORGE GEORGE K)**  
**Vice President**

Bangalore.

Dated: 20.02.2024.

/NS/\*

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.