

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-5418/Del/2014
(ASSESSMENT YEAR-2004-05)**

Ramo W/o (Late) Dharam Singh C/o. Sh. V. K. Goel, Advocates, 282, Boundary Road, Civil Lines Meerut AGZPR8672G (APPELLANT)	vs	ITO Ward-2(2) Meerut (RESPONDENT)
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Appellant by	Sh. Vinod Kumar Goel, ADV
Respondent by	Sh. Manoj Kumar Chopra, Sr. DR

Date of Hearing	05.05.2016
Date of Pronouncement	12.05.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 27/08/2014 passed by CIT (A)- Meerut, pertaining to Assessment Year 2004-05, on the following grounds:-

- “1. The Ld. A.O has not justified in issuing notice u/s 148 in which, the assessee fully disclosed the computation of capital gain before A.O. Hence, notice u/s 148 is nothing but change in opinion.
2. That the assessment passed u/s 144 without providing opportunity being heard is bad in law. Therefore, disallowance of Section 54F. The assessee filed various documents including certificate of Counselor Ward-3, Nagar Nigam, Meerut before A.O as well as CIT(A), Meerut. Ld.CIT(A) reject the claim of the assessee as afterthought is against the facts that the assessment relates to A.Y 2004-05 and order passed by I.T.O, Ward-2(2), Meerut on 29/12/2009 i.e, after five years. Hence, claim of the assessee cannot be said as afterthought.
3. That the expenses to get enhanced compensation is arbitrary, unjust and against the principle of natural justice. Ld. ITAT already allowed expenses on adhoc basis @ 20% of gross compensation as held in ITA No. 3766/Del/2009.

4. *That CIT(A) is in error to dismiss the ground no. 1 & 2 filed by the assessee and contradictory is against the facts and law.*
5. *That the assessee has right to add, delete or modify any grounds during the appeal proceeding.”*

2. At the time of hearing, Ld. AR inviting attention to the paper book filed, submitted that the point at issue is covered by the order of the ITAT In ITA No. 5417/Del/2014 in the case of Smt. Rajeshwari Vs. ITO also for the 2004-05 assessment year wherein vide order dated 8/9/2015, identical issue was restored to the file of the Assessing Officer. Attention was invited to paper book page no. 17-18 of the paper book filed which contained copy of the order. Following conclusion was relied upon.

“I have considered the rival submission and have perused the order of the A.O and the CIT(A). I find that the ex parte assessment order was framed in this case. The assessee is stated to be a widow of old age and illiterate as is evident from the fact that she has applied her thumb impression in the appeal memo etc. Learned counsel for the assessee has explained the circumstances due to which she could not file relevant evidence before the Assessing Officer and the same was filed before the CIT(A), who has called for the remand report from the Assessing Officer . In these facts of the case, I am of the view tht it shall be in the interest of justice to restore the grounds of appeal to the file of the Assessing Officer with the liberty to the assessee to file evidence which she may rely and the Assessing Officer is directed to frame assessment afresh in accordance with law after allowing due opportunity of hearing to the assessee. I direct accordingly.”

3. The Ld. Sr. DR relied upon the impugned order. On being queried to show how the issue can be said to have been considered and decided by the CIT(A) he was unable to show where the presumed arguments and submissions made by the assessee are discussed. The order though records that the submissions were forwarded to the Assessing Officer for his comments, but what was the remand report, of the A. O or rejoinder to the remand report stated to have been filed on behalf of the assessee has not been discussed by the CIT(A). Thus in the absence of the same it is not possible to decide whether the conclusion drawn was justified on facts or not. This discussion becomes more necessary and imperative in view of the fact that the assessment order is an ex-parte order passed u/s 144. Accordingly, the discussion on material facts becomes necessary. Without a valid consideration of the submissions

and arguments it cannot be said that the conclusion arrived at on the facts is correct. In the absence of any such discussion, the impugned order does not inspire any confidence. In the aforementioned peculiar facts and circumstances relying upon the precedent wherein the assessee in the facts of the present case is also claimed to be an illiterate lady, we following the precedent restore the issue back to the file of the Assessing Officer with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 12th of May 2016.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Dated:- 12/05/2016

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

R. Naheed / Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	05.05.2016	PS
2.	Draft placed before author	05.05.2016	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	12.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	12.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

