

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

**ITA No.-5487/Del/2017
(Assessment Year: 2013-14)**

Putul Kumari 2459, Block C2, Vasant Kunj, New Delhi. AIRPK5889J	vs	ACIT Circle 64(1) New Delhi
Assessee by	None	
Revenue by	Ms. Ashima Neb, Sr. DR	

Date of Hearing	23.04.2018
Date of Pronouncement	26.06.2018

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dt. 25.5.2017 of CIT(A)-21, New Delhi pertaining to 2013-14 AY on the following grounds:

1. *"That the assessment order is against law & facts.*
2. *That the Ld. CIT(A) has erred in law and on facts by making an addition of Rs. 1,17,980 on account of alleged undisclosed Rental income from property rented to State Bank of India, Jamui, Bihar without any basis whatsoever, even though the amounts are duly disclosed in the returns of income of preceding years and completely reconciled with the 26AS of the appellant. This act is excessive, illegal, arbitrary and uncalled for.*
3. *That the Ld. CIT(A) has erred in law and on facts by making an addition of Rs. 4,20,000 under the head "Income from House Property" on the basis of unsubstantiated and factually incorrect information that the property has been rented to Mahoba Foodkart 69 Private Ltd. @ Rs. 50,000/- per month whereas in fact, the same is self occupied during this period. This act is excessive, illegal, arbitrary and uncalled for.*
4. *That the Ld. CIT(A) has erred in law and on facts by making a disallowance of Rs. 8,95,248/- on account of expenses on Diesel purchased for Generators given out on rent, without any basis or reason whatsoever. This act is excessive, illegal, arbitrary and uncalled for.*
5. *The appellant craves leave to add, alter and/or amend the grounds of appeal."*

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over and since the position remained the same, it was deemed appropriate to proceed with the present appeal ex-parte qua the assessee appellant on merits. The Ld. Sr. DR was heard. Considering the submission and the record it was deemed appropriate to restore the issue back to the file of the CIT(A) for addressing the relevant facts. After the rising of the Bench, a person appeared stating that she was authorized to appear on behalf of the assessee and could not appear as she got late due to a medical check up of her father and forgot to inform her office so as to seek time

etc. Since, after hearing the Ld. Sr. DR it was noted that the issue had to be sent back to the file of the CIT(A) for addressing the relevant facts. Accordingly the Ld. AR was directed to ensure that the assessee participates fully and fairly in the proceedings before the CIT(A) as failing which the CIT(A) would be at liberty to pass an order on the basis of material available on record.

3. The relevant facts of the case are that the assessee returned an income of Rs. 16,25,925/-. The case was selected for scrutiny order CASS. It was noticed that the assessee had shown income from house property amounting to Rs. 3,81,799/- received from seven properties.

3.1 It was seen that in regard to Jamui (Bihar) property subject matter of addition which is found to be rented out to SBI certain discrepancies were noted viz-a-viz Form no. 26AS wherein the entire TDS was reflected as having been deducted for the assessee, however the assessee had reflected only 50% of its rental income.

3.2 It was also noted that as a parliamentarian at the relevant point of time the assessee had given the address as 15 Lodhi Estate, New Delhi and permanent address was stated to be at Lal Kothi, Gidhaur, Jamui, Bihar. It was noticed that income from residential property owned by her at Vasant Road, Vasant Kunj, New Delhi was not reflected. The assessee was required to explain, however no supporting evidences were filed in regard to the said issue also.

4. The Ld. AR in support of her request for time stated that 50% of the income qua the rented property to SBI went to the assessee's brother in law. Qua the residential property at Jamui Bihar it was stated that it was just an address used for official address as the property till date had not been inherited by the assessee after the untimely demise of her husband and her father in law. These submissions were made dehors the evidences.

5. I find on considering the record that as per submissions extracted at page 6 & 7 of the impugned order it is seen that the assessee's father in law late Sh. Kumar Surinder Singh died on 12.01.1999. He was the owner of the village property termed as Lal Kothi. His legal heirs were (a) Shri Digvijay Singh, son, (b) Manju Singh, Daughter, (c) Asha Singh, Daughter, (d) Sunita Singh, Daughter, (e) Kiran Rathore, Daughter and (f) Rekha Chauhan, Daughter. The claim was made that the property was inherited by his five daughters and one son. The assessee's husband also passed away on 24.6.2010 without any will leaving behind three legal heirs i.e. the assessee and her two daughters. Thus, the claim put forth as per record of the AO that the specific property continues to remain registered in the name of the assessee's father in law as the assessee has not staked any claim in the said property and had merely used it as an

address stands undisputed. Accordingly, the Vasant Kunj property which was stated to be the only SOP (self occupied property) of the assessee in her own name it was claimed cannot be a subject matter of addition in the year under consideration.

6. Similarly, the other additions pertaining to the expenses reimbursed of the rental genset etc. It is seen the claim as per record is that Gidhaur is a small village and most of the dealings happened in cash and the assessee had provided a confirmation from M/s SK Fuel Point with whom the assessee had a running account and the payment were made on monthly basis to run the generator. A perusal of the orders show that though assertions are made, however, they were not supported by necessary documentary evidences.

7. On consideration of the above detailed facts as have been elaborated I am of the view that in the peculiar facts and circumstances of the case it would be in the interests of substantial Justice to restore the issues back to the file of the CIT-A with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Admittedly on facts it is noticed that the claims put forth on behalf of the assessee were not supported on record by the counsel representing the assessee. It is noted that the assessee being a widow was handicapped by the incorrect / incompetent advise made available to her. Taking these peculiar facts and circumstances it is deemed appropriate to remand so as ensure that the taxpayer does not suffer for want of proper representation. While so directing it is hoped that the assessee utilises this opportunity fully and fairly by placing relevant supporting facts and evidences before the CIT-A . It is made clear that in the eventuality of abuse of the opportunity so provided in good faith the CIT-A would be at liberty to pass an order on the basis of material available on record. Said order was pronounced in the open court at the time of hearing itself

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

Order was pronounced in the open court 26.06.2018

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 26.06.2018

*Kavita Arora (DEL)/ AG(CHD)

Copy forwarded to:

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