

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

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**ITA No.-6790/Del/2017
(Assessment Year: 2007-08)**

Rajender Kumar Sharma, 184/5, Thapar Nagar, Meerut.	vs	ITO, Ward-2(2) Meerut.
Assessee by	Shri Rohit Aggarwal, CA	
Revenue by	Sh. S.L. Anuragi, Sr. DR	
Date of Hearing	02.07.2018	
Date of Pronouncement	11.07.2018	

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 31.8.2017 of CIT(A) Meerut pertaining to 2007-08 assessment year on the following grounds :-

- That the Id. CIT(A) has erred in law by not deciding the grounds no.2 & 4 as raised before him as reproduced hereunder :-*

"G.No.2.:That without prejudice to above, the order u/s 144/148 dated 10.12.2015 is barred by limitation as the same ought to have been passed on or before 31.03.2015.

G.No4:That the Id. AO. has erred in law by not admitting the affidavits of the appellant as well as his brother in whose favour the impugned sale deed of the property was executed, to the effect that the transfer deed was in actual a deed of family partition without any consideration, though the consideration of Rs.60,000/- was declared to have been paid and received in the said transfer deed."
- In any case, the transaction under reference ought to have been treated as a transaction family settlement in view of the duly sworn in affidavits of the appellant and his brother, being the purchaser of shop under reference and the Id. CIT(A) has erred in law as well as on .the facts of the case by ignoring the affidavits filed before the Id. AO. as well as before him.*
- That the estimation of Fair Market Value as made by the Ld. A.V.O as on the date of sale at Rs. 4,34,000/- is highly excessive and the objection raised before him have not been considered & disposed off by him before making the final estimation.*
- That the estimation of Fair Market Value of the shop as on 01.04.1981 at Rs. 21 ,000/- is incorrect and under estimated and the objections raised have not been considered by the Id. AVO before making final estimation.*
- The appellant respectfully craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of hearing of appeal, to enable your good-self to decide the appeal in accordance with law."*

2. At the time of hearing the Ld. AR on reading from the assessment order and the impugned order submitted that the AO failed to address the facts namely that the issue pertains to inherited property which was a shop situated at H.No. 257/1 present No. 184/5, Thapar Nagar, Meerut. Due to disputes amongst the brother i.e sons of Shri Narottam Das Sharma, ultimately a partition resulted amongst the brothers where the shop stood transferred to Shri Ashok Kumar Sharma. In the course of the assessment proceedings the assessee had filed two affidavits one of the assessee and one of his brother Shri Ashok Kumar Sharma. Being largely illiterate i.e. barely 8th pass whatever documents were prepared by Deed Writers were signed in ignorance. However the facts remain that the correct and true facts are set out in the affidavits. It was put to the Ld. AR that if the taxpayer is so ignorant, illiterate that he is signing various documents before the Court then what is the sanctity of relying on affidavits also signed by him as he still continues to remain equally ignorant/illiterate. Mr. Rohit Agrawal CA stated that as a counsel he is aware that correct and true facts are set out in the Affidavits filed by the assessee and his brother Shri Ashok Kumar Sharma to whom the family property stood transferred on partition. In the circumstances it was his limited prayer that let the matter be decided on the basis of correct and true facts.

3. The Ld. Sr. DR though placed reliance upon the orders, however in the face of the reference made by the AO to the two affidavits dated 29.1.2015 filed before him which have remained ignored he was unable to justify why the said affidavits be ignored.

4. I have heard the rival submissions and perused the material available on record in the facts as set out hereinabove I find that in the interest of justice it would be appropriate to remand the matter back for consideration denovo considering the consistently taken submissions before the CIT(A) and the AO namely that the assessee was a eight passé virtually illiterate and was unable to put across the correct facts qua the family settlements.

5. The parties were heard whether the remand be made before the CIT(A) or AO. The Ld. Sr. DR requested for a remand to the AO stating that facts may need to be verified at his end. The said request was accepted by the ld. AR. Accordingly, accepting the prayer the impugned order is set aside. The issues in the light of the aforesaid directions are

remanded back to the AO. The AO shall pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. Said order was pronounced in the Open Court at the time of hearing itself.

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

This order was pronounced in the open court on 11th July, 2018.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

*Veena/Poonam(CHD)

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI