

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1437/Del/2018
(Assessment Year: 2013-14)

Ashok Manglik, Flat No. A-1204, Antriksh Nature, Sector-52, Noida PAN: AAIPM1318B (Appellant)	Vs.	ITO, Ward-1(1), Noida (Respondent)
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Assessee by :	Shri Vicky Kapoor, CA
Revenue by:	Shri N.K. Bansal, Sr. DR
Date of Hearing	23/08/2018
Date of pronouncement	13/11/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)I, Noida dated 30.11.2017 for the Assessment Year 2013-14.
2. The assessee has raised the following grounds of appeal:-
 - "1. *In the facts and circumstances of the case, the Ld. CIT (A) erred in stating that the assessee has not attended the hearings on various dates when AR of appellant has sought adjournment with his letter dated 18.10.2017 with valid reasons. Ld. CIT(A) should have adjudicated Jhe issue on merits. It is a settled law that even the administrative orders have to be consistent with the rules of natural justice. Recently the ITAT Delhi vide order dated 04.05.2016 in the I.T.ANo.-2379/Del/2015 (ASSESSMENT YEAR 2010-11) Abhinav Dwivedi vs ITO also said that before passing the order, a reasonable opportunity shall be provided to the assessee.*
 2. *In the facts and circumstances of the case the CIT(A) erred in dismissing the appeal by not giving opportunity of hearing on the appeal filed by the appellant thereby sustaining the action of the A.O right in doing addition of Rs. 6,72,880 in LTCG made by the AO, which is unjustified, illegal and against the provisions of the Act.*
 3. *That in the facts and circumstances of the case the CIT(A) erred in dismissing the appeal and holding the order of A.O as confirmed,*

which is bad, both in the eyes of law and on facts as it was passed:-

- i) By not considering / overlooking the support and evidences submit for alteration/ renovation amount to Rs. 4,00,000/-.*
- ii) By not considering the investment in new house amounting by Rs. 1,00,000.*
- iii) By ignoring the facts and records produced during assessment proceedings.*

4. In the facts and circumstances of the case, while the assessee did not get justice from the Assessing Officer, he was denied the principles of natural justice by the Ld. CIT (A) also, which is unjustified, illegal and against the provisions of the Act.

5. That the appellant prays that the matter be decided on merits.”

3. The brief facts of the case shows that assessee is an individual who is a management consultant and besides the consultancy income is source of income is bank interest and annuity pension from life insurance Corporation of India. Assessee filed as return of income on 23/7/2013 declaring total income of ₹ 6 15440/-. During the course of assessment proceedings the assessee has earned capital gain on sale of residential house 4 ₹ 1.2 crores and assessee furnish the competition of the capital gain. The learned assessing officer examine the competition of the capital gain and held that long-term capital gain of ₹ 7 68660 is assessable in the hands of the assessee against ₹ 9 5780 shown by the assessee and therefore he made an addition of ₹ 672880/- consequently the the assessment under section 143 (3) of the act was passed on 22/3/2016 determining the total taxable income of the assessee at ₹ 12 88320/-.
4. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned commissioner of income tax appeals. The learned CIT – A passed in order on 30/11/2017 dismissing the appeal of the assessee holding that the assessee has shot in adjournment wide letter dated 18/10/2017 due to the festival reasons and date of tax audit. According to the learned commissioner of income tax appeals this is not a valid reason for seeking in adjournment and therefore he dismiss the appeal of the assessee holding that assessee is not serious to prosecute its case and therefore the opening for purpose is to be served by keeping the appeal pending. Therefore he confirmed the

order of the learned assessing officer and dismiss the appeal of the assessee for non-prosecution of the appeal. Therefore assessee aggrieved with the order of the learned commissioner of income tax appeals has preferred an appeal before us.

5. We have heard the rival contention and perused the order of the lower authorities. Without addressing the merits of the case the concern shown by the learned authorised representative is that the learned commissioner of income tax appeals has dismissed the appeal of the assessee not on the merit but holding that assessee is not interested in prosecuting the appeal. We have also considered the reasons advanced before the learned commissioner of income tax appeals for seeking adjournment by the assessee. On careful reading of the provisions of section 250 (6) the order of the Commissioner appeal disposing of the appeal shall be in writing and shall state the point for determination in the decisions thereon and the reasons for the decision. The learned commissioner of income tax has dismissed the appeal of the assessee not stating the reasons on the merits. Therefore in the interest of justice the set aside the whole issue back to the file of the learned commissioner of income tax appeals with a direction to decide the issue on the merits of the case after giving assessee in proper opportunity of hearing. The assessee is also directed to raise all legal contentions on the appointed date fixed by the learned commissioner of income tax appeal for disposing of his appeal.
6. Accordingly, appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 13/11/2018.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/11/2018
A K Keot

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1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	