

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-4421/Del/2018
(ASSESSMENT YEAR-2008-09)**

Randhir Singh S/o Late Shri Bishu, Vill-Jhuljhuli, PO-Ghumanhera, New Delhi. PAN No. ASAPS4729C (APPELLANT)	vs	ITO Ward 65(5), New Delhi. (RESPONDENT)
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Appellant by	Shri Randhir Singh, Assessee & Shri Manoj Kumar (Son of Assessee)
Respondent by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	19/11/2018
Date of Pronouncement	19/11/2018

ORDER

This appeal filed by the Assessee is directed against the Order dated 28.03.2018 of the Ld. CIT(A), New Delhi relevant to assessment year 2008-09 on the following grounds: -

1. *"The Ld. Commissioner of Income Tax (Appeals)-21, New Delhi (hereafter CIT(A)) erred in law and on the facts of the appellant's case in sustaining the addition of Rs. 21,58,674/- (being Rs. 20,96,633/- as long term capital gain & Rs. 65,041/- as interest income) as he neither called document nor examine any paper (except sale deed) submitted with reply dated 30.06.2015, 20.08.2015, 25.08.2015, 19.01.2016, 27.01.2016 and 29.01.2016 before Ld. ITO Ward 65(5), New Delhi (hereinafter the ITO).*
2. *That the Ld.ITO failed to appreciate that cost of acquisition of land is indeterminate and cannot be ascertained as land was received by assessee from his forefather making assessment in violation of ruling in case of CIT vs. B.C. Shrinivasa Setty (1981) 128 ITR 294 (SC).*
3. *That the Ld. CIT(A) failed to appreciate that the Ld. ITO erred in law and on facts of the appellant's case adding Rs. 23,24,808/- under the head "long term capital gain" by considering cost of acquisition of land at Rs. 1,30,355/- as on 01.04.1981 by making reverse calculation without any show cause and giving any opportunity of being heard to the assessee.*
4. *That the Ld. CIT(A) failed to appreciate that Ld. ITO erred in law and on the facts of the appellant's case by not referring valuation of cost of acquisition to concerned Valuation Officer.*

5. *That the Ld. CIT(A) failed to appreciate that Ld. ITO erred in law by ignoring and not allowing correct amount of deduction u/s 54B in respect of purchase of new agricultural land which is Rs. 37,20,000/- instead of Rs. 35,00,000/-.*
6. *That the Ld. CIT(A) failed to appreciate that Ld. ITO erred in law by not considering claim for deduction of construction of old ancestral house of assessee u/s 54F to the extent of Rs. 23,00,000/-.*
7. *That the Ld. CIT(A) failed to appreciate that Ld. ITO erred in law by not considering the submissions made and evidences filed by the assessee and particularly in true perspective.*
8. *That the Ld. CIT(A) failed to appreciate that Ld. ITO erred in law by not providing proper opportunity of hearing to the assessee and pass the assessment order in violation of principle of natural justice.*
9. *That the observation made by the Ld. ITO as well as Ld. CIT(A) are against the facts of the case, incorrect and contradictory based upon merely on sermons and conjectures without any concrete evidences.*
10. *The order passed by the Ld. CIT(A) is against the facts and circumstances of the case as well as law.*
11. *The Ld. CIT(A) failed to appreciate that Ld. ITO issued notice u/s 148 of the Act without applying the mind as issuance of notice was from non jurisdictional AO i.e. 64(3).*
12. *Therefore, applicant with utmost respectfully prayed to delete the addition made by the Ld. ITO of Rs. 23,24,808/- which was later on sustain by the Ld. CIT(A).*
13. *Assessee craves the leave to add, amend, alter or withdraw any grounds of appeal."*

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

3. During the hearing, assessee, has stated that AO has passed the exparte order u/s. 144/147 of the Income Tax Act, 1961 (in Short "Act") and similarly, the Ld. CIT(A) has also upheld the action of the AO, without giving sufficient opportunity to the assessee and without considering the submissions of the assessee. . He requested that the matter may be set aside to the file of the AO to decide the same afresh, under the law, after giving adequate opportunity of being heard.

4. Ld. DR did not raise any objection to the request of the assessee.

5. I have heard both the parties and perused the records. I have also gone through the order passed by the revenue authorities as well as the contention raised by the assessee in the grounds of appeal. I find force in the arguments of the assessee that AO has completed the assessment vide exparte order dated 31.3.2016 u/s. 147/144 of the Income Tax Act and similarly, Ld. CIT(A) also upheld the action of the AO, without considering the material on record. Therefore, in the interest of justice, the issues in dispute are set aside to the file of the AO for hearing on 19.12.2018 at 10.000 AM with the directions to decide the same afresh under the law, after giving adequate opportunity of being heard to the assessee. The assessee is also directed to appear before the Assessing Officer on 19.12.2018 at 10 AM and file all the necessary documents/evidences, if any, to substantiate his case and fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment. Since the order has been pronounced, there is no need to send the notice to the assessee for hearing.

6. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced on 19.11.2018.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 19/11/2018

KAVITA/SRBHATNAGAR

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

