

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ 'ए.', चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 32/CHD/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Gurdev Singh S/o Shri Kapoor Singh Village-Kheri Rangran, Teh-Jagadhri, Distt. Yamuna Nagar.	बनाम VS	The ITO, Ward – 3, Yamuna Nagar.
स्थायी लेखा सं./PAN No: BNGPS6756M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal

राजस्व की ओर से/ Revenue by : Smt. Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 26.11.2018

उद्घोषणा की तारीख/Date of Pronouncement : 30.11.2018

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee assailing the correctness of the order dated 23.11.2016 of Id. CIT(Appeals) Panchkula pertaining to 2007-08 assessment years on the following grounds :

- i) *That the order of the learned ITO, Ward -3, Yamuna Nagar is wrong, illegal and against the facts of the case.*
- ii) *That the Ld. ITO Ward -3, Yamuna Nagar is wrong in making addition of Rs. 86,15,767/- u/s 143(3)/147 The Income Tax Act, 1961*

2. The Id. AR inviting attention to the impugned order which is an ex-parte order, submitted that the issue is fully covered in favour of the assessee by virtue of the order dated 29.09.2017 in ITA 33/CHD/2017 in the case of Shri Dilgir Singh Alias Daljit Singh V ITO wherein considering identical prayer of the assessee on same set of facts the issues were remanded to the AO in order to afford a reasonable opportunity of being heard. In the facts of that case also, the assessee was being represented by C.A. Shri Amarjit Singh who on the very same specific date of hearing could not appear before the CIT(A) on account of accident of his father. ITAT considering the very same facts remanded the issue to the AO with the following observations :

8. We have considered the rival contentions. No doubt the assessee had failed to present its case properly before the lower authorities. Submissions before the Assessing officer admittedly were made a day after the completion of the assessment proceedings. Even in the appellate proceedings, the AR for the assessee failed to appear. Though in his affidavit, the AR of the assessee, C.A. Shri Amarjit

Singh has tried to justify his absence before the CIT(A) on the ground that his father was not well and he had to attend to his father. The plea raised in the above affidavit is general and vague and it proves negligence on the part of the C.A. In our view, if he because of some reasons was unable to attend the proceedings before the CIT(A), he was supposed to send an adjournment application atleast and send some proxy counsel or other person for seeking another date. However, due to negligence of the C.A. the assessee, in our view, should not be penalised. It is an admitted fact by the C.A. that he had not appeared on the date fixed before the CIT(A). In view of this, in our view, the interest of justice will be well served, if an opportunity is given to the assessee to furnish the requisite documents in support of his claim before the Assessing officer. It has been held time and again that only the actual and real income of the assessee should be taxed and that the litigants should not be penalized for their bonafide mistakes. In view of this, the impugned orders of the lower authorities is hereby set aside and the matter is restored to the file of the Assessing officer for decision afresh.

9. In the result, the appeal of the assessee is treated as allowed.

3. Inviting attention to the impugned order, it was submitted in the facts of the present case also, the assessee was represented on 06.10.2016 by Shri Amarjit Singh, C.A. and on 08.11.2016 he failed to appear before the CIT(A). The said non-appearance has been explained in the affidavit taken into consideration by the ITAT in the case of Shri Dilgir Singh Alias Daljit Singh. For ready reference, the relevant extract is reproduced hereunder:

“AFFIDAVIT

I, CA Amarjeet Singh, S/o Shri Prem Singh, R/o H.No. 513-R, Model Town, Yamunanagar, Haryana, do hereby solemnly affirm as under:-

- 1. That I am practicing as Chartered Accountant in Yamunanagar for last few years.*
- 2. That I had a brief of Shri Dalgir Singh, Sh. Gurdev Singh and Shri Dharam Singh of Yamuna Nagar.*
- 3. That I had taken few adjournments from CIT(A), Panchkula and the case was finally adjourned to 8.11.2016.*
- 4. That due to accident of my father on 26.10.2016 at Yamuna Nagar for that he had to be admitted in Hospital, and thereafter he was operated upon and then he had to be looked after at home. He had to be taken for regular checkups and as such due to which I could not attend the hearing with CIT(A), Panchkula on 8.11.2016. The non-appearance before the CIT(A), Panchkula is highly regretted.*

DEPONENT

Verification:

Verified that the contents of the above affidavit are true and correct to the best of my knowledge and nothing has been concealed therein.

DEPONENT”

4. Attention was invited to the record and it was his submission that herein also the assessment has been made u/s 144/147 of the Act. Accordingly, in the circumstances it was his submission that similar order may be passed in order to decide the issues which are identical.

5. The Id. Sr.DR on going through the order had no objection to the said prayer.

6. We have heard the rival submissions and perused the material on record. It is seen that in the facts of the present case the AO while passing order u/s 144/147 took note of the fact that though Shri Amarjit Singh, C.A. attended initially and sought adjournment,

thereafter he failed to appear leading to the addition on the grounds of long term capital gain of Rs. 86,15,767/-. In the facts of the present case, the relevant facts taken note of by the AO are as under :

“As per information available with this office it was found that the assessee sold land measuring 17 kanal 12 maria to M/s Prithvi Buildtech Private Limited, New Delhi for a consideration of Rs. 81,18,000/- on 04.01.2007. The assessee alongwith S/Smt Amrik Kaur, Gurnam Kaur, Kanwatjeet Kaur, Sukhwant Kaur, Rajwant Kaur and Sh. Kamaljeet Singh sold land measuring 07 kanal 19 marla to M/s Prithvi Buildtech Private Limited, New Delhi for a consideration of Rs. 51,66,937/- on 04.01.2007. All the family members were having equal share in the said land. The land sold by the assessee is covered within the ambit of capital asset as per provision of section 2(14) as the distance of land sold in Village Kheri Rangdan falls within 8 Km. of the municipal limits of Jagadhri. On the sale of this land the assessee earned a hefty amount of long term capital gain on which the due tax liability was not paid. For computing the capital gain on the sale proceeds of land, the value of land as on 01.04.1981 was required. Accordingly, information regarding fair market value of land during the year 1981-82 was called for from the Sub Registrar, Jagadhri. The Sub Registrar office supplied the following two sale deeds No. 1789 dated 11.06.1981 and No. 2354 dated 27.06.1981 in respect of sale of land at Village Jaroda during the period 1981-82. The Village Kheri Rangdan is located nearby the Village Jaroda, therefore, the rate of land supplied by the office of the Sub Registrar was applied for computing the long term capital gain”

6.1 Considering the details of registration deeds supplied by the office of the Sub Registrar, Jagadhri he noted that the land as per registration sale deed No. 2354 was sold at higher rate in comparison to other sale deed. Therefore, giving the benefit of higher rate for indexation, the rate of sale deed No. 2354 was applied and the capital gain on the sale proceeds of land was computed. It is seen that in the facts of the present case also, the representation even before the AO was lack-a-daisy. Accordingly, following the precedent, the impugned order is restored back to the file of AO with direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. It is hoped that the opportunity so provided is not abused as failing which the AO 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 of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 30.11. 2018.

Sd/-

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant – 2.प्रत्यर्थी/ The Respondent -3.आयकर आयुक्त/ CIT4.आयकर आयुक्त (अपील)/ The CIT(A)5.विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH6. गार्ड फाईल/ Guard File

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar