

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1112/Del/2018  
Assessment Year: 2009-10

Om Prakash  
C/o Jain Singh & Co.,  
2 (Basement), Central Lane,  
Bengali Market,  
New Delhi.

Vs. ITO,  
Ward-2(1),  
Ghaziabad.

PAN: BOEPP0588P

(Appellant)

(Respondent)

Assessee by : Shri Madhur Jain, Advocate  
Revenue by : Shri S.L. Anuragi, Sr. DR

Date of Hearing : 19.02.2019  
Date of Pronouncement : .02.2019

ORDER

This appeal by the assessee is directed against the order dated 15<sup>th</sup> December, 2017 of the CIT(A)-2, Noida, relating to Assessment Year 2009-10.

2. Facts of the case, in brief, are that on the basis of AIR information received that the assessee, during the financial year 2008-09 had deposited cash in his SB account of Rs.61,03,000/- maintained with Oriental Bank of Commerce, Sikrod, Ghaziabad, the case of the assessee was reopened and notice u/s 148 was issued. However, there was no proper compliance from the side of the assessee. The assessee, through his Advocate, had filed certain details stating that the assessee has sold land for

Rs.48,74,000/- and the money was deposited in the bank. It was further submitted that certain amounts were withdrawn from the bank and were subsequently deposited. The Assessing Officer asked for certain details, however, no such details were furnished for which the Assessing Officer proceeded to complete the assessment u/s 144 of the IT Act and made addition of Rs.35,19,000/- as unexplained cash deposit in the bank account. Similarly, he has also made addition of Rs.4,45,267/- as long-term capital gain on account of sale of the agricultural land. Thus, the Assessing Officer determined the total income at Rs.39,64,267/-.

2.1 In appeal, the Id.CIT(A) dismissed the appeal filed by the assessee by observing as under:-

“However, in response of first notice for hearing issued on 06.09.2017, fixing date for hearing 19.10.2017, an application for adjournment was filed on 19.10.2017 and hearing was adjourned to 03.10.2017. During the appellate proceedings, the appellant filed various applications for adjournment dated 10.10.2017, 30.10.2017, 20.11.2017, 24.11.2017 and 05.12.2017. Considering the request, the appellant was given sufficient, opportunities to represent the case. Despite providing final opportunities on 07.11.2017, 20.11.2017, 24.11.2017, 05.12.2017 and 11.12.2017 to represent the case, the assessee did not avail the opportunity. The above facts make it abundantly clear that the appellant is deliberately delaying the appellate proceedings and not interested in the adjudication. The appeal is, therefore, decided on merits as below.

5.2 It is gathered that the appellant had deposited cash amounting to Rs.61,03,000/- in saving bank account during F.Y. 2008-09 out of which source of Rs. 35,19,000/- remained unexplained. Further the assessee sold property for Rs. 48,74,000/- out of which the assessee had purchase agricultural land in his name and in the name of his wife for Rs. 39,77,800/- which was considered for the purpose of computing the long, term capital gains. The AO, however, had not given the benefit of deduction u/s 54F of the Act as the assessee failed to furnish any evidence of construction of house over such land. The assessee was given sufficient opportunities during assessment proceedings to file the explanation of the above but assessee did not make any compliance. Despite several opportunities given during assessment proceedings as well as appellate proceedings, no plausible evidence could be produced by the appellant to

explain the source of cash deposit and construction of house. In view of these facts, I do not find any reason to interfere with the action of the AO. Hence, the addition made by the AO is upheld. All grounds of appeal are dismissed.

6. In the result, the appeal is dismissed.”

3. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. “The Ld. CIT(A) erred in law and facts by confirming the addition of Rs.35,19,000/- and denying the deduction u/s 54F to the assessee.

2. That the Ld. CIT(A) failed to appreciate that the assessee having explained the source of cash deposited in the bank account, the onus shifted on the department to rebut the same, which the Ld. AO failed to do.

3. That the Ld. CIT(A) failed to appreciate the evidences on record given by the assessee during the course of assessment showing construction of residential house in F.Y. 2008-09.

4. That the Ld. CIT(A) failed to appreciate that the assessee was entitled to exemptions u/s 54B and 54F simultaneously.

5. That the Ld. CIT(A) erred in not considering the fact that the assessment order could not have been passed u/s 144 of the Act.

6. That the Ld. CIT(A) failed to appreciate that the notice issued to the assessee u/s 148 of the Act was without the authority of Law and vague.

7. That the Ld. AO issued the notice u/s 148 without any reason to believe as contemplated under the Act.

8. That the Ld. AO failed to communicate the reasons recorded for issuing the notice u/s 148 of the Act.

9. That the notice issued u/s 148 of the Act is without proper sanction and approval as required under the Act.

10. That the Orders passed by the Ld. AO and the Ld. CIT(A) are in violation of the principles of natural justice as no proper hearing was afforded to the assessee. It is, therefore, prayed that the additions/disallowances made by the Ld. assessing Officer may kindly be deleted and a fresh order be passed giving relief to the appellant.

Any other relief, which this Hon'ble Tribunal may deem fit and proper be given to the appellant.”

4. I have heard the rival arguments made by both the sides and perused the relevant material on record. I find due to non-submission of various details before the Assessing Officer, he made two additions as mentioned earlier. Since there was no proper compliance from the side of the assessee, the Id.CIT(A) also dismissed the appeal filed by the assessee by sustaining the various additions made by the Assessing Officer. It is the submission of the Id. counsel for the assessee that the matter was not properly handled by the lower authorities for which all these things happened and given an opportunity, the assessee now is in a position to substantiate his case. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore this matter back to the file of the Assessing Officer with a direction to give one final opportunity to the assessee to substantiate his case. The assessee is also hereby directed to appear before the Assessing Officer to substantiate his case without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are allowed for statistical purposes.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 21.02.2019.

Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMFBER

Dated: 21<sup>st</sup> February, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi