

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 5476/Del/2018
Assessment Year: 2013-14

SUNIL KUMAR BHATIA,
5163, KOLHAPUR ROAD,
KAMLA NAGAR,
DELHI – 110 007
(PAN: AAFPB5064)
(APPELLANT)

VS. ACIT, CIRCLE 35(1),
NEW DELHI

(RESPONDENT)

Assessee by : SH. K.R. MANJANI, ADV.
Department by : SH. S.L. ANURAGI, SR. DR.

ORDER

This appeal has been filed by the Assessee against the order dated 11.6.2018 of the Ld. CIT(A)-12, New Delhi relating to assessment year 2013-14 on the following grounds:-

1. The Ld. CIT(A) has erred on facts as well as in law in sustaining the additional of Rs. 1606675/- by denying benefit of section 54F by not following Hon'ble Delhi High Court judgement.
2. The Ld. CIT(A) has erred on facts as well as in law sustaining the addition of Rs. 367900/- which is payment towards credit card and paid by his son who is Advocate.

It is prayed that above additions of Rs. 1606675/- and Rs. 367900/- may kindly be deleted.

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 convenience.

3. Ld. Counsel of the assessee stated that the Ld. CIT(A) has passed the non-speaking order and only upheld the order of the AO, without applying his mind and did not give independent finding. Hence, he requested that the issues in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh on merits and direct him to pass a speaking order, after hearing the assessee.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records. It was the contention of the assessee's counsel that Ld. CIT(A) has passed the non-speaking order by only upholding the order of the AO. For the sake of clarity, I am reproducing the relevant finding of the Ld. CIT(A) as under:-

"7.1 I have gone through the assessment order, grounds of appeal, facts on record and the submission made by the appellant during the course of appellate proceedings before me. The AO has made two additions:

- 1) *A sum of Rs. 3,67,900/- has been treated by him as cash credit in view of the unexplained nature of cash expenditure incurred through credit card of the appellant. The AO has made other addition of Rs. 16,06,675/- by denying deduction under section 54F for holding more than one residential house property other than the one purchased at the time of availing exemption to avail deduction under section 54F.*
- 2) *The appellant on the other hand has contended before me that the AO furnished a confirmation from his son who is an advocate that the credit card in the name of appellant was used by him and the cash payment of Rs. 3,67,900/- to clear the credit card dues was made by him.*
- 3) *The AO apparently was not satisfied with the explanation offered by the assessee. Since it was the credit card of the assessee, the burden of proof was on him only, to substantiate with necessary documents. The assessee could not discharge the onus merely by producing a letter from his son. On these facts the source of bill payments remained unexplained. The addition is confirmed*

holding that the assessee could not prove the source of expenditure.

- 4) *The Assessing Officer has denied the claim of exemption under section 54F to the appellant as the appellant owned two more residential properties, namely, 1 /8 th share in property admeasuring 42 sq. meter in Mussorie and 150 Sq. feet in a residential property at 50-F, Kohlapur Road.*
- 5) *The appellant has contented before me that the joint ownership of small portions of at 150 sq. feet in Delhi and 17.5 sq. meter in Mussorie as joint owner did not have independent kitchen, bathroom and could not be classified as residential units. The appellant had submitted before me that the proviso to section 54F could not be made applicable to the appellant's case as the ownership of more than one house other than the new house purchased for availing exemption under section 54F in view of the judgment of Delhi High Court in the case of CIT Vs. Kapil Nagpal.*
- 6) *I have gone through the judgment of Delhi High Court in the case of CIT Vs. Kapil Nagpal wherein after analyzing the available material and the submission of*

the assessee, the High Court came to the conclusion that the assessee in that case did not possess any share in the kothi built on agriculture land and is 15% share was restricted to the land and the 15% share in the kothi was restricted to enjoying the benefits of rent from the property built on land which was not in the name of the assessee.

- 7) The facts in the present case are different as there is no such claim that the assessee does not own joint ownership of two other residential properties. In the circumstances the claim of the assessee cannot be held as the judgment quoted in his favour by the appellant is distinguishable on facts.*
- 8) I, therefore, sustain the addition of Rs. 16,06,675/- made by the AO by denying the exemption under section 54F.*

8. In the result, the appeal is dismissed."

5.1 After perusing the aforesaid finding of the Ld. CIT(A), I find that Ld. CIT(A), has not passed a speaking order and did not give his independent finding on the addition in dispute and only upheld the order of the AO without any justification, which is not sustainable in the eyes of law. Therefore, in the interest of justice, I set aside the

issues in dispute to the file of the Ld. CIT(A) to decide the issues in dispute afresh, in accordance with law, after giving adequate opportunity of being heard to the parties and pass a speaking order.

6. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 07/03/2019.

**Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER**

Dated:07/03/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR