



IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW

BEFORE SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No.596/LKW/2018
Assessment Year:2010-11

Smt. Shanti Tiwari 80 S Block, Yashoda Nagar Kidwai Nagar Kanpur	v.	Income Tax Officer Ward 3(4) Kanpur
TAN/PAN:BGCP3687B		
(Appellant)		(Respondent)

Appellant by:	Shri J. K. Yadav, Advocate		
Respondent by:	Shri C. K. Singh, D.R.		
Date of hearing:	05	03	2019
Date of pronouncement:	08	03	2019

ORDER

This is an appeal filed by the assessee against the order of the Id. CIT(A)-I, Kanpur dated 13/6/2018 for assessment year 2010-11. The grounds of appeal taken by the assessee are reproduced below:-

1. That the Ld. CIT Appeals has erred in law as well as on facts in not allowing opportunity of being heard on 08.05.2018 when the case was adjourned from 24.04.2018 on account of his non-availability in the office. The appellate order was passed on 13.06.2018 without allowing any opportunity of being heard to explain her appeal.

2. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating at all that no notice u/s. 148 had ever been served upon the address 80 BLOK-S, YASHODA NAGAR, KIDWAI NAGAR, KANPUR which was residential address of the appellant and notice u/s. 148 was served upon old address i.e. 133/171 M Block, Kidwai Nagar, Kanpur and these address were available in the sale deed which was made basis to initiate the proceedings u/s. 148.

3. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating that the A.O. has committed grave error in issuing notice u/s. 148 and sent the notice at wrong address despite of the availability of the old and new address in the sale deed.

4. That the Ld. CIT Appeals has further erred in law as well as on facts in not probing this fact from the assessment records that no notice u/s. 148 has been ever been served in the instant case, passed the ex-parte appellate order in the instant case and thus the assessment order is liable to be quashed as condition precedent for acquiring jurisdiction u/s. 148 were absent in the instant case.

5. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating that the first notice dated 11.10.2017 containing two addresses as stated in grounds of appeal no. 2 was served upon the assessee fixing the hearing on 23.10.2017, when the assessee came to know that income tax proceedings u/s. 148 have been initiated in the instant case.

6. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating the reply filed on 23.10.2017 filed before the A.O. and the case was adjourned on 31.10,2017 by the staff as the A.O. was not in the office.

7. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating that on 31.10.2017, the case was put for hearing but the A.O. was not in the office and again the case was adjourned for 05.11.2018. On 05.11.2018, the A.O. was again not in the office.

8. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating that the last notice dated 18.12.2017 was received on 21.12.2018 fixing the hearing on 22.12.2018 and the appellant being aged 73 years of age could neither understand the contents of the notice nor did intimate his son about this who was out of station for Govt. Audit. Thus the A.O. passed assessment order ex-parte on 22.12.2018 in the meantime.

9. That the Ld. CIT Appeals has further erred in law as well as on facts in not appreciating that the assessee has not been allowed to explain her case before the A.O. regarding cost of purchase of land and cost of further construction thereon and thus capital gains has not been computed properly in the instant case at all.

10. That the order so passed by the A.O. and by the Ld. CIT Appeals are able to be quashed under the circumstance of the case.

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the order of the Id. CIT(A) with the submission that the Id. CIT(A) has disposed of the appeal ex-parte without dealing with the issues on merit whereas as per law the Id. CIT(A) ought to have adjudicated the appeal on merit even if the assessee does not appear. Therefore, in the interest of justice, the order of the Id. CIT(A) may be set aside and the matter may be restored to the file of the Id. CIT(A) for adjudication of the impugned issues on merit in the light of the evidences filed by the assessee.

3. The Id. D.R. has placed reliance upon the order of the Id. CIT(A).

4. Having carefully examined the orders of the lower authorities in the light of the rival submissions, we find that the Id. CIT(A) has disposed of the appeal without dealing with the issues on merit. We find that the Id. CIT(A) has issued two notices on 29.3.2018 and 12.4.2018 for compliance on 11.4.2018 and 24.4.2018 respectively. On 24.4.2018, Id. A.R. of the assessee appeared and sought for adjournment. Accordingly the hearing was adjourned to 8/5/2018. On this date, as recorded by the Id. CIT(A), no written submission or any paper book has been filed by the assessee. He, therefore, dismissed the appeal of the assessee for non-prosecution. We are of the view that

since the Id. CIT(A) has not disposed of the issues on merit, the order of CIT(A) deserves to be set aside and we accordingly set aside the order of the Id. CIT(A) and restore the matter to his file with a direction to re-adjudicate the issues on merit afresh after affording an opportunity of being heard to the assessee.

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

Order pronounced in the open Court on 08/03/2019.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

DATED: 8th March, 2019

JJ:0603

Copy forwarded to:

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

By order

Assistant Registrar