

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**I.T.A .No.-1262/Del/2019
(ASSESSMENT YEAR-2009-10)**

Praveen Aggarwal 4, Racquet Court Road, Civil Lines, Delhi. PAN No. AAFPA9686D (APPELLANT)	vs	ITO Ward 20(2) New Delhi. (RESPONDENT)
Appellant by		Ms. Timsi Sharma, CA Ms. Neetu Jain, CA
Respondent by		Shri S.L. Anuragi, Sr. DR

ORDER

This appeal filed by the Assessee is directed against the order dated 31.12.2018 of the Ld. CIT(Appeals)-XXV, New Delhi relevant to assessment year 2009-10.

2. The 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. At the time of hearing, Ld. Counsel for the assessee stated that Ld. CIT(A) erred in law by merely dismissing the appeal only on the basis of non-appearance without deciding the matter on merits of the case. Hence, she stated that the appellate order is

liable to be set aside for fresh consideration. It was further submitted that learned Commissioner of Income Tax [Appeals] erred both in facts and in law in upholding the addition of Rs. 29,21,677/- by treating land bearing Khasra no. 111 min, Wazirabad, Delhi was a capital asset in the hands of the assessee on the date of its purported transfer, i.e. 06.03.2009 despite the fact that the said land had vested in Gram Sabha Wazirabad since 12.09.2006. It was further submitted that on the facts and in the circumstances of the assessee's case, the Ld. Commissioner of Income Tax [Appeals] erred both in facts and in law in upholding the addition of Rs.29,21,677/- by treating land bearing Khasra no. 111 min, Wazirabad, Delhi was a capital asset in the hands of the assessee on the date of its purported transfer, i.e. 06.03.2009 despite the fact that SDM [Civil Lines], Delhi confirmed the said land had vested in Gram Sabha Wazirabad since 12.09.2006 on direct enquiry made by the CIT [Appeal] himself. It was further submitted that learned Commissioner of Income Tax (Appeals) erred both in facts and in law in upholding the addition of Rs. 29,21,677/- by taking the sale consideration of the above said land as Rs. 36,25,000/- in the hands of the assessee while the assessee is merely entered into transaction as Power of Attorney holder not

as real owner of the property and the sale consideration neither accrued to the assessee nor received by him. In support of her contention, she filed Paper Book containing 1-104 in which she has attached the copy of assessment order passed u/s. 143(3) of the Act dated 1.12.2011 passed by the ITO, Ward 20(2), New Delhi for the assessment year 2009-10; acknowledgement of return of income alongwith computation of income for the financial year ended on 31.3.2009 relevant for the assessment year 2009-10; reply dated 23.8.2011 containing complete factual background with respect to land bearing Khasra No. 111 min, Wazirabad, Delhi measuring three bighas alongwith documentary evidences submitted before the Ld. AO; reply dated 11.10.2011 alongwith copy of bank account statement showing no payments has been received against alleged sale of land submitted before the AO; reply dated 19.10.2011 alongwith affidavits of Kamal Kishore Aggarwal and Praveen Aggarwal confirming the fact that no sale was effected and also no sale consideration paid or received by the vendee and vendor submitted before the AO; reply dated 8.11.2011 explaining as to why the addition on account of long term capital gain should not be made to the returned income of the appellant submitted the AO; detailed written submissions filed

before the Ld. CIT(A) on 14.3.2018; written submissions filed before the Ld. CIT(A) on 12.7.2017; written submissions filed before the Ld. CIT(A) on 3.5.2018; written submissions filed before the Ld. CIT(A) on 28.8.2018; copy of notice date fixed for the hearing of the appeal under section 250 of the Act dated 16.5.2017, which was not properly considered by the revenue authorities. In view of above, she requested that the issues in dispute may be set aside to the file of the AO for fresh adjudication, after giving adequate opportunity of being heard to the assessee.

4. On the contrary, Ld. DR relied upon the order of the authorities below and opposed the request of the Ld. counsel for the assessee.

5. I have heard both the parties and perused the records especially the orders of the revenue authorities as well as the contention raised by the Ld. Counsel for the assessee and the Paper Book filed by the assessee. I find considerable cogency in the contention of the Ld. Counsel for the assessee that Ld. CIT(A) has dismissed the appeal of the assessee only on the basis of non-appearance without deciding the matter on merits of the case, which is not tenable. I further find that Ld. CIT(A) has upheld the

addition of Rs. 29,21,677/- by treating land bearing Khasra no. 111 min, Wazirabad, Delhi was a capital asset in the hands of the assessee on the date of its purported transfer, i.e. 06.03.2009 despite the fact that the said land had vested in Gram Sabha Wazirabad since 12.09.2006 and also by treating land bearing Khasra no. 111 min, Wazirabad, Delhi was a capital asset in the hands of the assessee on the date of its purported transfer, i.e. 06.03.2009 despite the fact that SDM [Civil Lines], Delhi confirmed the said land had vested in Gram Sabha Wazirabad since 12.09.2006 on direct enquiry made by the CIT [Appeal] himself. I further note that the addition of Rs. 29,21,677/- by taking the sale consideration of the land in dispute was Rs. 36,25,000/- in the hands of the assessee while the assessee is merely entered into transaction as Power of Attorney holder not as real owner of the property and the sale consideration neither accrued to the assessee nor received by him. After perusing the Paper Book filed by the Ld. Counsel for the Assessee which is containing pages 1-104 wherein he attached the copy of assessment order passed u/s. 143(3) of the Act dated 1.12.2011 passed by the ITO, Ward 20(2), New Delhi for the assessment year 2009-10; acknowledgement of return of income alongwith computation of

income for the financial year ended on 31.3.2009 relevant for the assessment year 2009-10; reply dated 23.8.2011 containing complete factual background with respect to land bearing Khasra No. 111 min, Wazirabad, Delhi measuring three bighas along with documentary evidences submitted before the Ld. AO; reply dated 11.10.2011 along with copy of bank account statement showing no payments has been received against alleged sale of land submitted before the AO; reply dated 19.10.2011 along with affidavits of Kamal Kishore Aggarwal and Praveen Aggarwal confirming the fact that no sale was effected and also no sale consideration paid or received by the vendee and vendor submitted before the AO; reply dated 8.11.2011 explaining as to why the addition on account of long term capital gain should not be made to the returned income of the appellant submitted the AO; detailed written submissions filed before the Ld. CIT(A) on 14.3.2018; written submissions filed before the Ld. CIT(A) on 12.7.2017; written submissions filed before the Ld. CIT(A) on 3.5.2018; written submissions filed before the Ld. CIT(A) on 28.8.2018; copy of notice date fixed for the hearing of the appeal under section 250 of the Act dated 16.5.2017, which were not adequately considered by the revenue authorities.

5.1 Keeping in view of the facts circumstances of the case and in the interest of justice, I am of the considered view that the issues in dispute are required to be re-adjudicated by the Assessing Officer, after considering the contentions raised by the Assessee, as aforesaid and give adequate opportunity of being heard to the assessee and considered all the documents / evidences filed by the Assessee as well as the case laws cited by the Ld. Counsel for the assessee, if any. Assessee is also directed to fully cooperate with the AO in the proceedings and did not take any unnecessary adjournment and file all the necessary documents / evidences to substantiate its case. I hold and direct accordingly.

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

Order pronounced on 26-04-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated :26-04-2019

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT, NEW DELHI.