

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

ITA No. 1111/Del/2018
Assessment Year: 2009-10

ASHOK KUMAR GOYAL,
C/O A.K. GOEL, & ASSOCIATES,
57, NAVYUG MARKET,
GHAZIABAD – 201001 (UP)
(PAN: AARPG8729P)

VS. ITO, WARD 1(1),
GHAZIABAD

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. AB. Raja, AR

Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 05.12.2017 of the Ld. CIT(A)-2, Noida pertaining to assessment year 2009-10 on the following grounds:-

*"Sec 147/143(3): Assessed under wrong status
That the learned assessing officer has erred in law
and on facts in assessing the impugned income in
the hands of the assessee, in individual status,
whereas, if any income had to be added, it should
have been done in the hands of AOP. the fact that
was duly brought on record. The return filed by
AOP is sent by CPC under intimation to the*

assessing authority but he preferred sitting on it and not to proceed with it. The assessee is submitting details of the Land as a whole but Id. assessing authority has not applied his mind as the assessee submitted all details in reply of enquiry notices from time to time. None of those replies was responded by anyone.

147: Reassessment initiated after the limitation period. That the re-assessment proceedings completed by the Learned Assessing Officer are void-ab-intio as they were invoked after the limitation period. The first Notice u/s 148 dated 10.03.2016 was returned by the process server of the department and Post man of the Postal department. The CPC Act contains three modes of service of the notice namely a-through process server, b- through registered post and c- through affixation. In this case process server was sent once and returned the notice, speed post was sent which was returned also and no attempt to adopt last mode of service through affixation is adopted, speed post is not recognized as registered post as well known by all of us. Therefore, no lawful and serious attempt to serve notice was made by the

Id. assessing authority. The certified copies of report of process server and postal department are enclosed herewith.

147/143(3): order passed under wrong section That the learned Assessing Officer has erred in law and on facts in passing the assessment order u/s 147/143(3) of the Income Tax Act and not u/s 147/144. Though Notice u/s 144 was served upon the assessee and it was replied accordingly. No attempt to enquire or gather information etc. is made. The certified copies of order sheet of assessee's case is enclosed.

50Cc :- Sec 50C wrongly invoked That the learned Assessing Officer has erred in law and on facts in making an addition of Rs39,52,000/- u/s 50C on asset which was not capital asset. He had to do it because assessee's consideration was Rs. 1200000/- only but stamps were for the value Rs. 5152000/- only. Since the assessment was made on the base of deemed consideration, the Id. assessing authority was duty bound to refer the matter to Valuer to ascertain the location. On so many occasions the assessee has told that land was falling in flood area. How could the value of

fertile land in non-flood area be equated with the land in flood area, certificate of tehsildar declaring the Land in flood area is enclosed herewith.

2(14): land fulfilled the condition of sec 2(14) situation That the learned Assessing Officer has erred in law and on facts in not considering that the location of the land fulfilled the condition of sec 2(14)iii of the Income Tax Act, 1961. 50C Not referring to DVO That the learned Assessing Officer has erred in law and on facts in not referring to DVO for the purpose of valuing of the said property while invoking sec 50C of the Act, as the market value of the said property is much lower than the value applied by the AO. Ld. CIT (Appeals) has erred by relying on Google Maps (Not being any authority to certify by Central Government) and not relying on the certificate of Tehsildar Gautambudh Nagar being an authorized authority by Central Government for certifying distance as also asked by him during hearing proceedings. In fact Distt. Gautam Budh Nagar contains three Tehsils namely- Dadri, Jevar and Gautambudh Nagar. NOIDA is within Dadri Tehsil further containing the it as just a block/village. NOIDA is just a development

authority entrusted to develop certain area and all controls both administratively and authoritatively to administer are within District Gautambudh Nagar authorities through said three Tehsils. However, Municipal committee Padri is the right place to consider the distance envisaged u/s 2(14)(iii) of the Act.

48: Benefit of indexation of cost of acquiring and improvement not given That the learned Assessing Officer has erred in law and on facts in not granting benefit of indexed cost of acquisition and improvement while calculating the capital gain. 147/143(3) documents and information furnished was not considered That the learned Assessing Officer has erred in law and on facts in not appreciating the documents and information furnished before him. Ld. CIT (Appeals) has erred by not directing for re-computing Long Term Capital Gain u/s 48 read with 112.

234A/B/C: Interest wrongly charged That the learned Assessing Officer has erred in law and on facts in charging interest u/s 234A, 234B and 234C. The assessee is senior citizen who is entitled to get exemption from Advance Tax interest.

154: rectification application pending That this appeal is subject to application u/s 154 and for making up deficiencies.

156: incomplete notice of demand That Notice of Demand did not contain computation of Tax, interest thereon on reverse of it as required u/r 15 of Income Tax Rules. 1962.

147/143(3): proper head under which addition made not mentioned That assessment order does not contain computation of income under the heads of income prescribed by the Income Tax Act, 1961.

147/143(3): order passed is erroneous That order is bad in law, non-speaking, vague, incomplete and against aforesaid facts.

246. General prayer to amend or to take up any ground of appeal The appellant craves leave to add, alter or vary the grounds of appeal before or at the time of hearing. The assessee has applied for giving effect to orders of Id. CIT (Appeals) but orders could not be received so far. Therefore, the assessee revise this memorandum of appeal accordingly."

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 the issues in dispute are squarely covered by the Judgement dated 02.07.2018 of the Hon'ble Supreme Court of India in the case of M/s New Okhla Industrial Development Authority & Ors. vs. Commissioner of Income Tax – Appeals & Ors. in Civil Appeal No. 15613 of 2017 & Others. In this regard he filed the copy thereof before the Bench and also given copy of the same to the Ld. Sr. DR. Both the parties agreed that the said judgment of the Hon'ble Supreme Court of India was not available at the time of completion of assessment proceedings as well as till the passing of impugned order of the Ld. CIT(A). Therefore, both the parties have requested to set aside the issues in dispute to the file of the Assessing Officer with the direction to decide the same afresh, in view of the Judgement dated 02.07.2018 of the Hon'ble Supreme Court of India in the case of M/s New Okhla Industrial Development Authority & Ors. vs. Commissioner of Income Tax – Appeals & Ors. in Civil Appeal No. 15613 of 2017 & Others.

4. After hearing both the parties and after perusing the records available especially the orders of the revenue authorities as well the Judgement dated 02.07.2018 of the Hon'ble Supreme Court of India in the case of M/s New Okhla Industrial Development Authority &

Ors. vs. Commissioner of Income Tax – Appeals & Ors. in Civil Appeal No. 15613 of 2017 & Others and other documentary evidences and keeping in view the statements of both the parties and in the interest of justice, I set aside the issues in dispute to the file of the Assessing Officer with the direction to decide the same afresh, on the anvil of the Judgement dated 02.07.2018 of the Hon'ble Supreme Court of India in the case of M/s New Okhla Industrial Development Authority & Ors. vs. Commissioner of Income Tax – Appeals & Ors. in Civil Appeal No. 15613 of 2017 & Others and give adequate opportunity of being heard to the assessee.

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

Order pronounced on 13-05-2019.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated :13-05-2019

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.

