

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**Stay Application No. 522/Del/2019
(IN ITA No.2646/Del/2019)
Assessment Year: 2014-15**

**ITA No.2646/Del/2019
Assessment Year: 2014-15**

Manish Batra, 10, Avtar Enclave, Paschim Vihar, New Delhi-110063 (PAN: ABYPB9298G)	vs	Income Tax Officer, Ward-41(3), New Delhi
Appellant		Respondent

**Assessee by : Shri A.K. Srivastava, CA
Department by: Ms Rinku Singh, Sr. DR**

**Date of hearing : 22.05.2019
Date of pronouncement : 31.05.2019**

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

The captioned appeal is preferred by the assessee against the order dated 22.1.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-14, New Delhi {CIT (A)} for assessment year 2014-15.

2.0 Brief facts of the case are that the assessee is engaged in the business of trading of table mats, table covers being

carried on in the name and style of M/s Mahavir Impex. Return declaring income of Rs. 2,42,003/- was filed which was processed initially u/s 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') and subsequently, the case was selected for limited scrutiny through CASS. As per the AIR information received, the assessee had sold certain properties on 31.01.2014 for a sum of Rs. 1,30,00,000/-. The Assessing Officer noted that no long term capital gain had been declared by the assessee in the return of income. As per the information available with the Assessing Officer, the cost of property sold was Rs. 27,66,500/- and after indexation, the cost of acquisition for the assessee worked out to Rs. 50,05,286/-. Thus, based on these figures, the Assessing Officer proposed an addition of Rs. 80,00,714/- on account of long term capital gain. In response, the assessee submitted before the Assessing Officer that the long term capital gain, as computed by the Assessing Officer, was not taxable in the hands of the assessee as the sale of the property was not effected for the reason that the part sale consideration received through cheque amounting to Rs. 57 lakh was dishonoured. Therefore, the sale was not completed. It was further submitted by the assessee before the Assessing Officer

that sale consideration of Rs. 73 lakh payable to the assessee in cash was also not paid to him and, thus, the assessee was cheated by the purchaser. It was also submitted before the Assessing Officer that the assessee had filed suits in District Court of Ghaziabad for declaring the sale as null and void and for the cancellation of the sale deed executed by the assessee. However, the Assessing Officer did not accept the assessee's contention and noted that as per the sale deed executed and registered, the assessee had received Rs. 73 lakh by cash and Rs. 57 lakh by way of cheques and, therefore, the assessee's contention that the sale had not materialised was not acceptable. The Assessing Officer proceeded to make an addition of Rs. 80,00,714/- on account of long term capital gains. A further addition of Rs. 5,31,748/- was also made to the income of the assessee as income from other sources and the assessment was completed at an income of Rs. 87,74,195/-.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority and challenged the action of the Assessing Officer in making the impugned additions. However, the Ld. Commissioner of Income Tax (Appeals) dismissed the assessee's

appeal and now, the assessee is before this Tribunal (ITAT)

challenging the additions on the following grounds:-

“1. That on the facts and circumstances of the case, as available in the assessment order and on the file of the Assessing Officer, the Learned Commissioner of Income Tax (Appeals), erred in not considering the same, before confirming the addition of Rs. 80,00,174/- on account of Capital Gain on Sale of Plot.

2. That the Learned Commissioner of Income Tax (Appeals) being aware of the fact that the cheques for Rs. 57,00,000/- issued by the buyer having been dishonoured, he ought to have held that the sale deeds executed, were to be treated as cancelled / non-est as per the terms of the sale deeds, and that no Capital Gain accrued to the appellant.

3. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), erred in not considering and commenting on the case laws cited before the Assessing Officer which are partly reproduced in the assessment order.

4. That the Learned Commissioner of Income Tax (Appeals) having observed that the assessee had received interest amounting to Rs. 5,31,748/- from M/s Cosmic Structures Ltd., as per 26AS, which also shows TDS of Rs. 53,171/-, ought to have directed that credit for the same be allowed .

5. That the calculation of tax payable and interest u/s 234B being incorrect, the Learned Commissioner of Income Tax (Appeals) ought to have directed the Assessing Officer to re-compute the tax and interest payable after allowing credit of TDS.

6. That the order by the Learned Commissioner of Income Tax (Appeals) is bad in law and has been passed without giving sufficient opportunity.

The Appellant craves leave to add, alter, amend, modify, vary or delete any ground of appeal before or at the time of hearing.”

3.0 The Ld. Authorised Representative (AR) submitted that the registration of sale deed, although, has evidentiary value but it is not conclusive. It was submitted that if the assessee, despite the registration of sale deed, is able to prove that no sale has in fact taken place and that the transaction is sham, capital gains tax is not leviable. It was further submitted that the assessee has filed suits in the District Court of Ghaziabad for treating the sale as null and void and for cancellation of the sale deed in view of specific clause in the sale deed which provided that in case the cheques were not honoured, the sale deed shall be deemed to have been cancelled. Our attention was drawn to the relevant pages in the Paper Book containing the copy of the sale deed. It was further submitted that the Ld. First Appellate Authority had failed to note that the terms of the sale deed clearly provided that in case a cheque is not honoured, the sale deed was to be treated as cancelled. It was further submitted that capital gains can be taxed only if there is actual transfer and that since payment of purchase consideration is an essential part of transfer of property, the impugned sale cannot be said to have materialised

and transfer of the impugned property effected when the sale consideration had not been paid. It was submitted that although registration is *prima facie* proof of intention to transfer the property, the same is not proof of operative transfer if the payment of consideration is a condition precedent for passing of the property. The Ld. AR, relying on judicial precedents prayed that the addition made on account of capital gains be deleted.

4.0 However, on a query from the Bench, the Ld. AR agreed that the matter may be restored to the file of the Assessing Officer for examining the issue afresh in light of the evidences and the assessee be given the liberty to file necessary fresh before the Assessing Officer in support of his contention.

5.0 The Ld. Sr. Departmental Representative had no objection to the issue being restored to the file of the Assessing Officer.

6.0 We have heard the rival submissions and perused the material available on record. We duly take note of the fact that the assessee has filed suit for declaring the impugned sale as null and void. We also note that although the sale deed states that the sale consideration has been paid to the assessee, it is the assessee's contention that the cheques have been dishonoured

and that the cash component of the sale consideration has also not been received. We also note that the sale deed mentions that the seller i.e. the assessee has received the sale consideration prior to the execution of the sale deed. However, it is further noted that the sale deed also mentions that the sale deed will be deemed to have been cancelled in the event of the cheques being dishonoured. All these facts would necessarily have to be examined by the Assessing Officer before the impugned proceeds can be brought to tax. During the course of hearing, the Ld. AR also could not apprise the Bench on the outcome of the civil suit which had been filed by the assessee for declaring the sale as *non-est*. Accordingly, it will be in the fitness of things if the Assessing Officer re-examines the issue after duly considering whatever evidence the assessee may deem appropriate to file before the Assessing Officer in support of his claim and thereafter pass the assessment order as per law. The Assessing Officer will afford proper opportunity to the assessee to present his case and the assessee will also fully cooperate in the assessment proceedings in this regard whenever he is called upon to do so failing which the Assessing Officer shall be at liberty to proceed *ex parte qua* the assessee in accordance with law. Accordingly, in

light of our above observations, we restore the entire appeal to the file of the Assessing Officer. Thus, the appeal stands allowed for statistical purposes.

7.0 Since the assessee's appeal has been restored to the file of the Assessing Officer, the stay petition becomes *infructuous* and is dismissed.

8.0 In the result, the appeal of the assessee is allowed for statistical purposes and the stay application of the assessee stands dismissed.

Order pronounced in the open court on 31st May, 2019.

Sd/-

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 31st MAY, 2019
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR