

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 06/Del/2019
Assessment Year: 2009-10

BINA AGARWAL,
H.NO. KA-43, KAVI NAGAR,
GHAZIABAD
UTTAR PRADESH - 201002
(PAN: ABAPA2799R)
(ASSESSEE)

vs. ITO, WARD 1(5),
GHAZIABAD

(RESPONDENT)

Assessee by: Sh. C.S. Anand, Adv.
Revenue by: Ms. Ekta Vishnoi, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 05.7.2018 passed by the Ld. CIT(A), Muzaffarnagar relating to Assessment Year 2009-10 on the following grounds:-

"1. That on the facts of the case and under the law, the proceedings u/s 147 initiated by the LT.O. Ward 1(5) Ghaziabad are liable to be quashed, because he was not the Assessing Officer of the assessee.

[Note: The assessee was regularly assessed in Ward 1(2) Ghaziabad]

2. That on the facts of the case and under the law the assessment order dated 14.12.2016 passed u/s 144/147, in pursuance of notice u/s 148 stated to had been issued on 21.03.2016, is liable to be quashed, because the said notice dt. 21.03.2016 u/s 148 was never served upon the assessee.

3. That on the facts of the case and under the law, the assumption of jurisdiction to reopen the case on the basis of vague information that the assessee had

sold immovable property for Rs.48,20,000/- was illegal.

4. That on the facts of the case and under the law, the re-assessment proceedings are liable to be quashed because the I.T.O. Ward 1(5) Ghaziabad had failed to provide/ communicate the Reasons Recorded for the reopening the case, to the assessee.

5. That on the facts of the case and under the law, the re-assessment order passed by the I.T.O. Ward 1(5) Ghaziabad is liable to annulled because the same was passed without issuing a notice u/s 143(2).

6. That on the facts of the case under the law, the rejection of claim that the agriculture land sold was not the "Capital Asset", is arbitrary, unjust and illegal.

7. That on the facts of the case and under the law, the STCG computed at Rs. 12,58,578/- is arbitrary, unjust and illegal.

8. That on the facts of the case and under the law, the appellate order dt.05.07.2018 passed by the Id CIT (A) Muzaffarnagar is liable to be annulled, because the assessee was never informed regarding transfer of her appeal from the office of the CIT (A), Ghaziabad to the office of the CIT (A) Muzaffarnagar.

9. That on the facts of the case and under the law, the Ld CIT(A) Muzaffarnagar has erred in dismissing the appeal, in an ex-parte manner.

[Note: The notice of hearing stated to had been issued on 20.04.2018, 21.05.2018 and 07.06.2018 were never served upon the assessee. The date and mode of dispatch of such three notices are not mentioned by the Ld CIT(A) in the appellate order]

10. *That on the facts of the case and under the law, the Ld CIT (A) Muzaffarnagar has erred in stating that the appellant is not interested in pursuing the appeal.*

[Note: The assessee was intending to raise few additional Grounds of Appeal, on getting the notice of hearing from the Ld.CIT(A) Ghaziabad, which never happened.]

11. *That on the facts of the case and under the law, the Ld. CIT(A) Muzaffarnagar had erred in upholding the incorrect view formed by the I.T.O. Ward 1(5) Ghaziabad primarily on the ground that the Certificate issued by Nagar Nigam Ghaziabad on 18.01.2016, (which was filed by the assessee) was the photocopy and not the original."*

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 brevity.

3. During the hearing, Ld. counsel for the assessee has stated that lower authorities have erred in law and on facts in passing the orders without providing adequate opportunity of being heard and without observing the principle of natural justice. It was further submitted that Ld. CIT(A) has also erred in law and on facts in not quashing the impugned reassessment exparte order passed by AO u/s 144/147 of the Act. However, he confirmed the said exparte order of the AO by passing an exparte order dated 05.7.2018 by the Ld. CIT(A). Therefore, he requested that the issues in dispute may be remitted back to the AO to decide the same afresh, as per law after giving adequate opportunity of being heard to the assessee and consider all the documents/evidences of the assessee.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has given various opportunities to the assessee, but the assessee remained non-cooperative.

5. I have heard both the parties and perused the records, especially the orders of the revenue authorities. I am of the view that there is no doubt that assessee remained non-cooperative before the Ld. CIT(A) as well as before the AO. I further find that AO has passed the exparte order dated 14.12.2016 u/s. 144/147 of the Act and also Ld. CIT(A) has also passed an exparte order dated 05.07.2018 which in my opinion, is not in accordance with the principles of natural justice and it is an erroneous approach. Keeping in view of the facts and circumstances as explained above and in the interest of justice, I set aside the issues in dispute to the file of the Assessing Officer with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and consider all the evidences / documents to be filed by the Assessee. Assessee is at liberty to file any evidences for substantiating her case before the AO and did not take any unnecessary adjournment in the proceedings.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 10/10/2019.

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

Date 10/10/2019

"SRB"

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches

