

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 849/KOL/2019
Assessment Year: 2010-2011**

Shashi Shekhar Saraf,.....Appellant
5, Kabir Road, Kolkata-700026
[PAN: ALIPS9596A]

-Vs.-

Income Tax Officer,.....Respondent
Ward-45(3), Kolkata,
3, Government Place (West),
Kolkata-700 001

Appearances by:

Shri M.D. Shah, Advocate, for the Appellant
Shri Jayanta Khanra, JCIT, Sr. D.R, for the Respondent

Date of concluding the hearing : September 18, 2019
Date of pronouncing the order : November 08, 2019

ORDER

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-13, Kolkata dated 15.01.2019 passed ex-parte, whereby he dismissed the appeal of the assessee for non-prosecution.

2. The assessee in the present case is an individual, who entered into an agreement alongwith other co-owners with a builder M/s. Saraf Real Estate Limited for construction and development of their property at 2/3, Judges Court Road, Kolkata. The long-term capital gain arising from the said transaction was declared by the assessee during the relevant years including the year under consideration. On the basis of the information that the DVO had estimated the cost of the property as on 01.04.1981 on a

lower side in the case of one of the co-owners and keeping in view that the assessee had not paid long-term capital gain by adopting the sale consideration of flats on the basis of stamp duty valuation as per section 50C of the Income Tax Act, the assessment for the year under consideration was reopened by the Assessing Officer and a notice under section 148 was issued by him after recording the reason. In reply, a letter was filed by the assessee requesting that the return of income originally filed by him for the year under consideration on 29.09.2010 may be treated as the return filed in response to the notice under section 148. During the course of assessment proceedings, a request was made by the assessee to the Assessing Officer for getting the property re-valued by the DVO. This request of the assessee was not found acceptable by the Assessing Officer and by adopting the fair market value of the property as estimated by the DVO as on 01.04.1981, he recomputed the capital gain chargeable to tax in the hands of the assessee for the year under consideration, which resulted in the addition of Rs.1,94,826/-.

3. The addition of Rs.1,94,826/- made by the Assessing Officer to his total income under the head "long-term capital gain" was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee for non-prosecution vide his appellate order dated 15.01.2019 passed ex-parte. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, a written submission was filed by the assessee before the Id. CIT(Appeals), inter alia, challenging the validity of the assessment made by the Assessing Officer under section 143(3)/147 of the Act. He has

contended that the Id. CIT(Appeals), however, has not taken into consideration the said written submission and proceeded to dismiss the appeal of the assessee vide his impugned order passed ex-parte without going into the merit of the issues raised therein. He has urged that the matter may, therefore, be sent back to the Id. CIT(Appeals) for deciding the same on merit after taking into consideration the written submission filed by the assessee. Since the Id. D.R. has also not raised any objection for sending the matter back to the Assessing Officer as sought by the Id. Counsel for the assessee, I set aside the impugned order passed by the Id. CIT(Appeals) ex-parte and restore the matter to the file of the Assessing Officer for deciding the same on merit after giving one more opportunity of being heard to the assessee. As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Id. CIT(Appeals) and shall extend all the possible cooperation so as to enable the Id. CIT(Appeals) to dispose of the appeal expeditiously.

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

Order pronounced in the open Court on November 08, 2019.

**Sd/-
(P.M. Jagtap)
Vice-President**

Kolkata, the 8th day of November, 2019

- Copies to :*
- (1) **Shashi Shekhar Saraf,
5, Kabir Road, Kolkata-700026**
 - (2) **Income Tax Officer,
Ward-45(3), Kolkata,
3, Government Place (West), Kolkata-700 001**
 - (3) *Commissioner of Income Tax (Appeals)-13, Kolkata,*
 - (4) *Commissioner of Income Tax, Kolkata- , Kolkata;*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.