

IN THE INCOME TAX APPELATE TRIBUNAL  
DELHI BENCH "SMC": NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 6375/DEL/2018**

A.Y.: 2009-10

CHITRESH SINGH,  
R-9, 201, RAJ NAGAR,  
GHAZIABAD  
UTTAR PRADESH  
(PAN: AZGPS3560G)  
**(Appellant)**

vs. ITO, WARD 1(2),  
GHAZIABAD

**(Respondent)**

Assessee by : None  
Department by : Sh. Amrit Lal, Sr. DR.

**ORDER**

This appeal filed by the Assessee is directed against the Order dated 22.05.2018 of the Ld. CIT(A), Aligarh pertaining to assessment year 2009-10 on the following grounds:-

1. *That on the facts and in the circumstances of the case and in law, the order passed by the CIT(A), Ghaziabad is bad in law.*
2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disallowing the deduction u/s. 54 of the Act.*

*That the appellant reserves it right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.*

2. The aforesaid appeal was earlier fixed for hearing on 23.04.2019 and on the written request of the Ld. Counsel for the assessee the hearing was adjourned for 23.7.2019. On 23.7.2019 again on the written request of the assessee's counsel the case was adjourned for 06.11.2019. On 06.11.2019 when the matter came up for hearing, none appeared on behalf of the Assessee nor filed any application for adjournment. Hence, I am of the view that no useful purpose would be served to issue notice again and again to the assessee. In view of facts and circumstances of the case and in the interest of justice, I am deciding the appeal of the assessee ex parte, after perusing the records and hearing the Ld. DR.

3. The brief facts of the case are that AO received information that the assessee had sold an immovable property for a consideration of Rs. 38,90,000/- in which his share is half i.e. Rs. 19,45,000/-. After making a preliminary enquiry, the AO issued the notice u/s. 148 of the Income Tax Act, 1961 (in short "Act") on 28.03.2016. No return of income was filed in response to the said notice. Therefore, notice u/s. 142(1) of the Act was issued on 20.5.2015, but no compliance was made by the assessee and lastly the AO issued a notice u/s. 144 of the Act on 13.6.2016. In response to the same, the AR of the assessee appeared and seek adjournment, but after that he did not turn up and AO in the absence of the explanation of the assessee and on account of non-appearance, completed the assessment u/s. 144/147 of the Act vide order dated 31.10.2016 and made the addition of Rs. 19,45,000/- on account of short term capital gain. Aggrieved by the assessment order, assessee filed appeal before the Ld. CIT(A) who vide his impugned order dated 22.5.2018 has partly

allowed the appeal of the assessee by giving the finding at para no. 7.1 at page no. 8 of the impugned order, which is reproduced as under, for the sake of convenience.

*"7.1 In this case, the sole issue is determination of the capital gain on sale of the immovable property. The value of the appellant's half share has been determined at Rs. 19,45,000/- which has not been disputed by the appellant. The AO has considered the whole of this value as a capital gain whereas the appellant is contending that he should be allowed the benefit of the cost of acquisition. In my opinion, this is a valid argument and the capital gain can be computed only after allowing the cost of acquisition. The appellant has further claimed benefit for the investment made in purchasing the plot. In the remand report, the AO has argued that the deduction u/s. 54 can be allowed only if the investment is made for purchasing a house property. I find merit in this argument of the AO. It is seen that the appellant has purchased a plot for Rs. 7,05,000/- on 6.9.2006 but it was found that no house has been constructed on*

*the said plot so far. Therefore, it is clear that the essential condition of section 54 has not been complied with. Hence, no deduction is allowable u/s. 54. Therefore, the AO is directed to compute the LTCG by taking full value of consideration of Rs. 19,45,000/- and reducing therefrom the appellant's share of the indexed cost of acquisition (including the cost incurred for buying the plot and raising the construction on the same plot and also the stamp duty cost). The AO may obtain the necessary details and make the computation accordingly."*

3. After hearing the Ld. DR and perusing the order passed by the revenue authority, especially the impugned order of the Ld. CIT(A), as reproduced above, I am of the view that assessee remained non-cooperative before the AO and AO completed the assessment by making the addition of Rs. 19,45,000/-, but before the Ld. CIT(A) assessee has not substantiated his claim by filing any documentary evidence and the Ld. CIT(A) has rightly dismissed the appeal of the assessee and denied the deduction u/s 54 of the Act. Therefore, in my view no interference is called for in the well reasoned order of the Ld. CIT(A), hence, I uphold the same and accordingly the ground raised by the assessee is rejected.

4. As mentioned above, I am deciding the appeal of the assessee exparte on merits, after perusing the records and hearing the

Respondent i.e. Ld. Sr. DR, but in the interest of justice, I am giving liberty to the assessee, if so, advised if the Assessee is aggrieved with this order, he can move an Application under Rule 24 of the ITAT Rules, 1963 for restoring the appeal and satisfy the Tribunal for sufficient cause of non-appearance before the Tribunal on the date of hearing and the Tribunal is at liberty to restore this appeal, after hearing both the parties, in accordance with law.

5. In the result, the Appeal of the assessee is dismissed.

Order pronounced on 08-11-2019.

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

Date:08/11/2019

**SRB**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches