

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE  
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.551/Bang/2018  
(Assessment Year: 2012-13)

Smt. Surajdevi Sipani,  
Prop. Suraj Properties,  
No.868, Sipani Grand, 5thCross,  
17<sup>th</sup> E Main, 6<sup>th</sup> Block, Koramangala,  
Bengaluru-560 034  
PAN ACIPS 8754K

....Appellant

Vs.

Jt. Commissioner of Income Tax,  
Range 4(3), Bangalore.

.....Respondent.

Assessee By:	Shri V. Srinivasan, Advocate.
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT (D.R)

Date of Hearing :	25.11.2019
Date of Pronouncement :	27.11.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-4, Bangalore passed u/s. 143(3) and u/s 250 of the Income Tax Act, 1961 (the Act).

2. The assessee has raised the following grounds of appeal :

1. The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in disposing off the appeal without allowing sufficient and real opportunity to the appellant to represent her case before the learned CIT[A] under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] ought to have appreciated that the appellant's AR had appeared and argued the case based on the materials on record and had sought further time to furnish the relevant documents and make further submissions on the applicability of the provisions of section 45[2] of the Act and hence, the appellate order passed before allowing the said opportunity stands vitiated on account of total non application of mind especially when it has been shown that none appeared for the appellant in the appellate order under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in upholding the long term capital gains of Rs.3,23,22,831/- assessed by the learned A.O. on the erroneous ground that the provisions of section 45[2] of the Act were attracted under the facts and in the circumstances of the appellant's case. They failed to appreciate that the provisions of section 45[2] of the Act have no application at all and hence, the capital gains assessed ought to have been deleted.

3.1 Without prejudice to the above, the learned CIT[A] ought to have appreciated that the long term capital gains computed by the learned A.O. was highly excessive but also unreasonable and totally divorced of ground realities obtaining on the date of transfer under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] is not justified in upholding on facts and in law the disallowance of Rs.8,47,451/- made u/s.40[a][ia] of the Act under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies herself liable to be charged to interest u/s. 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. The Brief facts of the case are that the assessee is in Real Estate business and filed Return of Income on 28.09.2012 with total income of Rs.3,10,11,130 and survey under Section 133A was conducted in the premises of assessee on 23.08.2011. The Assessing Officer considering the submissions made by the assessee dealt on the disputed issue of Long Term Capital Gains (LTCG) and cost of acquisition and disallowance under Section 40(a)(ia) of the Act and assessed

the total income under Section 143(3) dt.27.02.2015 computing the LTCG Rs.6,41,94,232. Aggrieved by assessment order the assessee has filed an appeal with the CIT (Appeals) whereas the CIT (Appeals) has posted the case for hearing on 21.9.2016, 24.11.2017 and 8.12.2017. But the assessee though appeared on 23.9.2016 and 29.12.2017 but there are no written submissions or documentary evidences filed or furnished details inspite of granting opportunities. Hence the learned CIT (Appeals) based on the material available on record and the findings of the Assessing Officer has dismissed the assessee's appeal. Aggrieved by the order of CIT (Appeals) the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorised Representative of the assessee submitted that the learned CIT (Appeals) has erred in dismissing the appeal exparte and prayed for one more opportunity to substantiate the merits of case. Contra, the learned Departmental Representative supported the orders of CIT (Appeals).

5. We heard the rival contentions and perused the material on record. On perusal of the CIT(Appeals) order, we found that the assessee was provided opportunity of hearing but could not submit the written submissions. We, considering the principles of natural justice and the reasons envisaged by learned AR, consider it appropriate to restore the entire disputed issue to the file of the CIT(A) but considering the facts on record with respect to non-appearance of the

assessee or learned AR in spite of posting the case on various dates in appellate proceedings and the assessee chose not to appear with evidence and details which cannot be overlooked. Therefore, we are of the substantive opinion that the assessee should be provided an opportunity of hearing with payment of cost of Rs.5,000/- to the Income-tax Department within a period of one month from the date of receipt of this order. Subject to the payment of above cost, we restore the entire disputed issue to the file of the CIT(A) to consider the matter afresh and adjudicate on merits. Further, the assessee shall submit proof of payment of cost with Tribunal and appellate authorities. It is nevertheless to mention that the CIT(A) should provide reasonable opportunity to the assessee to file documents/evidences in support of case and the assessee shall also co-operate in submitting the information for early disposal of the appeal and we order accordingly.

6. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 27th Nov., 2019.

Sd/-

**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 27.11.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore