

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 3674/Del/2015  
Asstt. Year: 2011-12

ITO Ward-37 (1), New Delhi.	Vs.	Lekh Raj H.No. 207-210, Ramayan Pana, Pooth Kurdh Delhi -39 PAN AWMPR5686D
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Sh. S.N. Meena, Sr. DR
Assessee by :	None
Date of Hearing	07/11/2019
Date of pronouncement	29/11/2019

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

The appeal is filed by the department against the order passed by the Ld. CIT (Appeals) – 13, New Delhi vide order dated 23.3.2015 and pertains to assessment year 2011-12.

2.0 Brief facts of the case are that for the year, return declaring an income of Rs. 15,83,437/- was filed. Subsequently, the case was selected for scrutiny and during the course of assessment proceedings the Assessing Officer (AO) noticed that the assessee has deposited an amount of Rs. 12,647,000/- in cash in his savings bank account with State Bank of India. Assessee was required to explain the source of cash deposits and to file evidences in support thereof. It was the contention of the assessee before the AO that he had received an advance of Rs. 12,452,000/- in cash in respect of agreements for sale of his agricultural land from eight parties. The assessee filed copies of agreements to sale with the parties. The statement of the assessee was also recorded u/s 131 of the Income Tax Act, 1961 (hereinafter called 'the Act'). Thereafter, the AO issued summons u/s 131 of the Act to all the parties. All the summonses were received back undelivered with the remark that no such person existed at the address or that the address was incomplete. The AO also noted that the assessee could not file details of repayment of advances and evidences in support thereof. Accordingly, an amount of Rs. 12,452,000/- was added u/s 69A of the Act as income from undisclosed sources. Further, the AO

also noted that although the assessee had claimed that he had sold agricultural land which was not liable to capital gains, the agricultural land sold by him fell within the limits of the Municipal Corporation of Delhi and was, therefore, liable to capital gain tax. Accordingly, an amount of Rs. 15,135,271/- was added to the income of the assessee as long term capital gains. Apart from this the AO also made an addition of Rs. 615,188/- being interest income less declared in the income tax return. The assessment was completed at an income of Rs. 28,458,650/-.

2.1 The assessee's appeal before Ld. CIT (Appeals) was partly allowed wherein the Ld. CIT (Appeals) deleted the addition on account of long term capital gain to the tune of Rs. 15,135,271/- by noting that the AO had not considered the fact that the assessee had purchased another plot thereby entitling him for exemption u/s 54F of the Act. The Ld. CIT (Appeals) also noted that regarding the cost of acquisition, the AO had applied the rate arbitrarily without any basis. With respect to addition of Rs. 12,452,000/- u/s 69A of the Act, the Ld. CIT (Appeals) noted that although the summons issued by the AO have come back un-served, the assessee had filed copies of agreement along with complete addresses and PAN numbers and, therefore, it was not

a fit case for making addition solely on the basis of summons being returned un-served.

2.2 Aggrieved by the order of the Ld. CIT (Appeals), the department is now in appeal before the ITAT.

3.0 None was present on behalf of the assessee/respondent when the appeal was called out for hearing. No application for adjournment has also been received. A perusal of the order sheet entries shows that the appeal was first fixed for hearing on 13.9.2018 then on 11.12.2018 and thereafter, on 27.2.2019. On all these three occasions, none was present on behalf of the assessee. Subsequently on 22.5.2019 one Shri Raj Karan, CA was present before the court who sought an adjournment. The case was adjourned to 5.9.2019. On 5.9.2019 the assessee was again unrepresented and the case was adjourned for hearing to 7.11.2019 i.e. for today. Today also the assessee/respondent remains unrepresented. It is apparent that the assessee/ respondent does not wish to exercise his right of being represented before this Tribunal and, therefore, we have no option but to proceed *ex parte* hearing of the case qua the assessee / respondent.

4.0 The Ld. Sr. DR read out the relevant portions from the impugned order and submitted that the addition with respect to long term capital gains of Rs. 15,135,271/- has been deleted by the Ld. CIT (Appeals) by observing that the assessee has invested Rs. 22,246,563/- on purchase of agricultural land and construction of residential house entitling him for exemption u/s 54 F. It was submitted by the Ld. Sr. DR that this fact was not available before the AO and if this issue was raised for the first time before the Ld. CIT (Appeals) and documents have been submitted in this regard, the AO should have been given an opportunity to examine and comment on the same. Similarly, with respect to the addition on account of cash deposits of Rs. 12,647,000/- which had been deleted by the Ld. CIT (Appeals), the Ld. Sr. DR submitted that the Ld. CIT (Appeals) had shifted the onus on the AO to have made due inquiries without appreciating the fact that all the summons issued had been returned un-served and only the copies of agreements and PAN numbers have been furnished before the AO. The Ld. Sr. DR prayed that the appeal of the department deserved to be allowed on both the grounds.

5.0 We have heard the submissions of the Ld. Sr. DR and have also perused the impugned order. It is seen that in Para 5.3, the Ld. CIT (Appeals) has made an observation that the assessee had invested Rs. 22,246,563/- on purchase of agricultural land and construction of residential house and was, therefore, entitled to exemption from capital gain u/s 54F. However, it is apparent that this issue had never been raised before the AO as is evident from the assessment order. Thus, apparently this claim has been raised for the first time before the Ld. CIT (Appeals) and apparently the Ld. CIT (Appeals) has allowed admission of additional evidences without following the rigors of Rule 46A of the Income Tax Rule, 1962. This is not a permissible in law and this action of the Ld. CIT (Appeals) cannot be upheld. The Ld. First appellate authority is bound to seek a remand report from the AO if he decides to adjudicate the issue by giving benefit of admitting fresh evidences before him. This has apparently has not been done in this case. Similarly, we find that the Ld. CIT (Appeals) has deleted the addition pertaining to cash deposits in the bank by simply relying on the copies of agreements and the PAN numbers furnished by the assessee during the course of assessment proceedings. The Ld. CIT (Appeals) has completely

ignored the fact that summons issued u/s 131 to the eight parties from whom the assessee has claimed to have received the advances were received back un-served. It is worthwhile mentioning that these summonses were received back undelivered with the remark that no such person existed at the addresses or the address was incomplete. Thus, undisputedly, the assessee had failed to discharge the onus cast upon him but the Ld. CIT (Appeals) did not give any importance to this failure in the discharge of the onus by the assessee but proceeded to give relief only on the ground that the assessee has provided the copies of sales agreements and PAN Nos. This in our opinion does not absolve the assessee from the onus cast upon him and on this issue also we are not in agreement with the course of action taken by the Ld. CIT (Appeals). Therefore, on an overall view of the matter and considering the basic fallacies in the order of the Ld. CIT (Appeals), it is our considered opinion that both the issues need to be re-examined in detail. We restore both the issues to the file of the AO with the direction to adjudicate the issues *de novo* after giving proper opportunity to the assessee to present its case. In case the assessee fails to respond to the notices issued by the AO, the AO shall be at liberty to proceed *ex*

*parte qua* the assessee and pass a fresh assessment order on these two issues in accordance with law.

6. In the final result the appeal of the department stands allowed for statistical purposes.

**Order pronounced in the Open Court on 29<sup>th</sup> November, 2019.**

sd/-

sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 29/11/2019

***Veena***

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi