

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri P.M. Jagtap, V.P and Shri A.T. Varkery, AM]

I.T.A No. 2360/Kol/2019 A.Y 2015-16

Arghanil Mukhopadhyay PAN: AJXPM 2415M	Vs.	I.T.O., Ward 23(2), Hooghly
Appellant		Respondent

Date of Hearing	22-11-2019
Date of Pronouncement	10.01.2020

For the Appellant	Shri Miraj D.Shah, Id. AR
For the Respondent	Shri Supriya Pal, JCIT, Id.DR

ORDER

PER SHRI A.T. VARKEY, JM

This is an appeal preferred by the assessee against the order of Ld. CIT (Appeals) , 6, Kolkata dated 17-12-2018 for the assessment year 2015-16.

2. At the outset itself, Shri Miraj D.Shah, Id. AR of the assessee brought to our notice that the impugned order is an *ex parte* order and the reasons for not appearing before the Id. CIT(A) was because the assessee resides in United States of America (U.S.A) and mother of the assessee keep visiting him and stays with him for some time in U.S.A. In order to prove this fact the Id. AR drew our attention to the copies of Indian Passport of assessee as well as his mother to show that they were out of India while the appeal was fixed for hearing before the Id. CIT(A). And also from the affidavit filed by the assessee's mother, they had explained the reason for the cause of the delay in filing the appeal before this Tribunal and the assessee has prayed to condone the delay of 222 days for the interest of justice. After perusal of copies of the relevant pages of the passports of assessee as well as his mother, we note that both were out of India during the period when the appeal was listed for hearing before the Id. CIT(A) and so the Id. CIT(A) taking note that none appeared before him during the appellate proceedings dismissed the appeal. However, we were informed that the

impugned order dismissing the assessee's appeal was un-served to the assessee/ his mother; and the assessee got the information only after the assessee's mother came back from U.S.A to India. It is noted that only after the Assessee's mother returned from USA, she came to know about the impugned order passed by Id. CIT(A) which was delivered to her house in time, but her servant had kept it with her not understanding what it is. And when the assessee's mother realized the seriousness of the matter, then immediately without wasting any time she approached the Id.AR and gave him the copies of the relevant case file and instructed him to file the appeal before the Tribunal and in that process delay of 222 days happened, which according to the Id. AR is not intentional on the part of the assessee. Since the delay happened because of the aforesaid facts, which according to us is reasonable cause, so we are inclined to condone the delay and we do so. Thus, we note that in the aforesaid circumstances the Id. CIT(A) has passed the impugned order ex parte without giving proper opportunity to the assessee and since assessee's mother was out of India, notice of hearing could not be meaning fully served upon them and no effective hearing could have taken place before the Id. CIT(A) and since the assessee was in the dark about the appeal proceedings/hearing fixed before the Id. CIT(A), there is ex-facie violation of natural justices. However, the main grievance of the assessee which he had pleaded in his typical colloquial English/slang before the AO during assessment proceedings was against the proposed action of invoking section 56(2) (vii) (b) (ii) of the Income-tax Act, 1961 (in short, the 'Act ') in respect of an immovable commercial property purchased by the assessee. Since according to AO, the immovable property was purchased by the assessee for a consideration less than the stamp duty value of the property by an amount exceeding fifty thousand rupees he show caused assessee as to why he should not tax the difference by invoking sec. 56(2)(vii)(b)(ii) of the Act. The AO in the assessment order notes that the assessee had purchased immovable property for a consideration of Rs. 42,96,000/-. However, since the market value of the property as per stamp valuation authority amounted to Rs. 95,70,250/-, the AO asked the assessee as to why "*sec 56(2)(vii) (b)(ii) should not be invoked and the difference in consideration is assessed as income in the assessee's hand i.e Rs. 95,70,250 – Rs. 42,96,000= Rs. 52,74,250/-*". Thereafter in the assessment order, the AO reproduces the assessee's reply which was not accepted by the AO; and then the AO asked the

assessee to give his consent to refer the issue of valuation of the immovable property to the DVO, however, since assessee did not revert back to him for reference the issue to DVO, the AO added Rs. 52,74,250/- to the total income of the assessee According to Id.AR , the assessee had purchased the immovable property only for Rs.42,96,000/- whereas the market value of the property as per Stamp Valuation Authority was at Rs.95,70,250/-. So according to Id.AR though the AO understood, that the assessee was contesting the valuation of the property in question and in that context it can be very well inferred that the assessee wanted to refer the issue of market value of the immovable property to the District Valuation Officer, however, did not do so, on the specious plea that assessee did not give consent to his letter proposing referring the issue to DVO dt. 30-10-2017, which action of AO, cannot be countenanced by us. We note that the assessee from the inception has been contesting the AO's desire to invoke section 56(2)(vii)(b)(ii) of the Act in respect of the immovable property, so he pleaded that he purchased the property only for Rs. 42,96,000/-, and not at the value as determined by the Stamp Valuation Authority. So in all fairness the AO ought to have referred this issue to the DVO as held by the Hon'ble Jurisdictional High Court's decision in the case of CIT vs. Sunil Aggarwal 372 ITR 83(Cal) Therefore, we set aside the impugned order of the Id. CIT(A) and remand the issue back to the file of the AO for denovo adjudication of this issue with a direction to him to refer the valuation of the immovable property purchased by the assessee to the DVO and to adjudicate the issue de novo after getting the report from DVO and after hearing the assessee in accordance to law.

3. In the result, the appeal of the assessee is allowed for statistical purposes

Order Pronounced in the Open Court on 10th January, 2020

Sd/-

P.M. Jagtap
Vice President (KZ)

Sd/-

A.T. Varkey
Judicial Member

Dated 10 -01-2020

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: Shri Arghanil Mukhopadhyay 22/1/C Jannagar Road, Serampore, Hooghly-712201. W.B.
2. Respondent/Revenue: The I.T.O., Ward 23(2), Hooghly, Aaykar Bhawan, Khadinamore, G.T Road, Chinsurah, Hooghly-712101.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order Assistant Registrar
ITAT Kolkata