

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.1737/Del/2017
Assessment Year: 2008-09

Shri Hari Singh L/H Ram Kishore C/o M/s. Ashok Raj & Associates, 19, Navyug Market, 2 nd Floor, Ghaziabad PAN No. EKEPS9968H (APPELLANT)	Vs.	Income Tax Officer Ward- 1 (4) Noida (RESPONDENT)
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Appellant by	Ms. Gunjan Sharma, CA
Respondent by	Sh. S. N. Meena, Sr. DR.

Date of hearing:	21/01/2020
Date of Pronouncement:	21/01/2020

ORDER

PER R.K PANDA, AM:

This appeal filed by the assessee is directed against the order dated 24.01.2017 of the CIT(A)-1, Noida relating to A.Y.2008-09.

2. The assessee in the grounds of appeal has challenged the exparte order of the CIT(A) in confirming the addition made by the AO in the order passed u/s. 147/144 of the IT Act,1961.

3. Facts of the case, in brief are that as per the AIR information, the assessee alongwith one co-partner sold immovable property bearing Khata No. 1476, Khet No 69, Rakba 0.7020, Khet No 70, Rakba 0.0380 hectare and Khet No 71, Rakba 0.1260 hectare totalling three Kita total Rakbai 0.8660 hectare situated at village Dhum Manikpur, Pargana and Tehsil Dadri, Gautam Budh Nagar during F.Y. 2007-08. The sale consideration of the above property was Rs.30,00,000/- and value for the purpose of stamp duty was Rs.2,60,60,000/-. To examine the issue of payment of tax on capital gain arising on transfer/sale of above property, verification letter vide notice u/s 133(6) was issued by the AO to the assessee on 13.01.2015. In response to the same, the assessee did not submit any reply. Again on 03.02.2015 the ward inspector duly served the notice on assessee's legal heir Sh. Ram Kishore Saini. In response to the same Sh. Ram Kishore Saini submitted that his father Sh. Hari Singh expired in the year 2011 and in support of his claim he furnished death certificate of Sh. Hari Singh. However assessee's legal heir Sh. Ram Kishore Saini did not furnish details of tax payment arising on Capital Gain on sale of aforesaid property. Therefore, the AO initiated action under section 147 of the IT Act, 1961 after getting approval from the Addl. Commissioner of Income Tax, Range-1, Noida which was accorded on 02.03.2015

and accordingly he issued notice u/s 148 on 05/09.03.2015 which was duly served upon the assessee's Legal Heir Sh. Ram Kishore Saini. In compliance to notice u/s 148 of the IT Act, 1961 neither anybody attended nor filed any application for adjournment. Since there was no compliance from the side of the assessee, the AO invoking the provision of section 144 of the IT Act and applying the provision of section 50C, determined the long term capital gain in the hands of the assessee at Rs.1,20,75,668/-.

4. Since none appeared on behalf of the assessee despite service of notice, the Ld. CIT(A) in the exparte order passed by him dismissed the appeal filed by the assessee.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the time of hearing submitted that the Ld. CIT(A) without giving adequate opportunity has dismissed the appeal of the assessee. Further he has not decided the appeal on merit. She requested that in the interest of justice the assessee should be given an opportunity to substantiate his case. She accordingly submitted that the matter may kindly be restored to the file of the CIT(A) for fresh adjudication.

7. The Ld. DR on the other hand strongly opposed the arguments advanced by the assessee. He submitted that despite opportunities granted by the AO and the CIT(A) there is no compliance and, therefore, no further opportunities should be granted to the assessee and the appeal be decided here itself by dismissing the appeal of the assessee.

8. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that despite number of opportunities granted by the AO and the CIT(A) there was no compliance from the side of the assessee for which both the lower authorities have passed exparte order. It is also an admitted fact that the Ld. CIT(A) has not decided the appeal on merit which he is required to do as per the provisions of the Act but has simply dismissed the appeal for want of prosecution. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and substantiate his case failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing itself i.e. on 21.01.2020.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Neha

Date:- 21.01.2020

Sd/-

(R.K PANDA)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21.01.2020
Date on which the typed draft is placed before the dictating Member	21.01.2020
Date on which the approved draft comes to the Sr.PS/PS	21.01.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	21.01.2020
Date on which the fair order comes back to the Sr. PS/ PS	21.01.2020
Date on which the final order is uploaded on the website of ITAT	21.01.2020
Date on which the file goes to the Bench Clerk	21.01.2020
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	