

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3556/DEL/2019
[Assessment Year: 2013-14]

AMIT SAXENA
(LEGAL REPRESENTATIVE FROM
ESTATE OF SUSHIL SAXENA)
C-2/261, JANAKPURI,
NEW DELHI – 110 058
(PAN: AATPS9277N)
[Appellant]

Vs. DCIT, CIRCLE 22(2),
NEW DELHI – 2

[RESPONDENT]

Assessee by: Shri Rajesh Mahna, Advocate &
Shri Ramand Roay, Advocate
Revenue by : Smt. Rinku Singh, Sr. DR.

ORDER

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax [Appeals-XXV], New Delhi dated 27.03.2019 pertaining to assessment year 2013-14 on the following grounds:-

1. *That Ld. Commissioner of Income Tax (Appeals) had erred in law and on facts in dismissing the appeal filed by legal heir on account of reduced deduction under Section 80IC of the Income Tax Act, 1961. Keeping in view the facts and circumstances and plain reading of Section 80IC of the Income Tax Act, 1961 the Appellant should have been permitted to claim full deduction under Section 80IC in respect of the income earned from the eligible unit.*
2. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts is coming to the conclusion that*

the Appellant chose not to press the appeal despite several opportunities culled out in the chart of fixation dates without appreciating that the Appellant had made all attempts and taken all steps to substitutes the name of Sh. Amit Saxena as legal heir and failed because of technical reasons.

- 3. That the Appellant had full filled all condition of filing of appeal through the legal heir Smt. Lata Saxena but she also died on 31.03.2017 leaving behind Sh.Amit Saxena as legal heir. The Appellant Sh.Amit Saxena made all attempts to file the appeal electronically by substituting his name and Permanent Account No. to full filled the legal requirement! procedural requirement. nd the Commissioner of Income Tax (Appeals) instead of appreciating that appellate proceeding itself could not be legally carry on without the substitute name of Sh.Amit Saxena and appeal had to be filled electronically once again as per the legal procedural requirement of CBDT.*
- 4. That the Appellant had never got opportunity to represent the case and order passed is without providing adequate and reasonable opportunities. The Commissioner of Income Tax (Appeals) has neither consider representation dated 04.03.2016 and 18.12.2017 with other information placed on record in file of office of the CIT (A) apart from the grounds of appeal taken in the appeal filed manually on 1B.04.2016.*
- 5. That the order of Commissioner of Income Tax (Appeals) is bad in law and on facts of the case. The Appellant*

craves permission to add, amend and alter any of the ground before or on the date of hearing.

2. At the time of hearing, Id. Counsel for the assessee draw my attention towards the impugned order passed by the Ld. CIT(A) and stated that Ld. CIT(A) has decided the issues in dispute against the assessee, without serving the notice upon the assessee. He further stated that Sh. Sunil Saxena, the assessee has died during the proceedings and his wife Smt. Lata Saxena become legal heir before the Ld. CIT(A). But Mrs. Lata Saxena, the legal heir of the assessee has also died during the proceedings and their Son Sh. Amit Saxena, has become Legal Representative of the assessee and filed the present appeal before the Tribunal. He further draw my attention towards the order dated 29.11.2019 passed by the ITAT, SMC Bench, New Delhi in ITA No. 6021/Del/2017 (AY 2010-11) & 06 Others Appeals by filing the copy thereof and stated that Ld. Counsel for the assessee has brought to the notice of the Bench that Assessee has expired and appeal before the Ld. CIT(A) was filed by the legal heir Smt. Lata Saxena, the wife of the assessee. However, she also expired during the appellate proceedings. The Ld. AR of the assessee also pointed out that an Application was filed before the Ld. CIT(A) to bring on record Sh. Amit Saxena, the son of the assessee as Legal Representative of the assessee. In view of above, he submitted that Tribunal should decide the issues in dispute after hearing both the parties, but the Tribunal vide order dated 29.11.2019 remitted the appeal back the issues in dispute to Ld. CIT(A) with the directions to decide the issues in dispute after taking on record the legal heir and after allowing reasonable opportunity of hearing to the assessee. Therefore, he requested

that the issues in dispute may be decided on merit by this Tribunal not set aside the same, as done by the Tribunal vide its order dated 29.11.2019, as aforesaid.

3. Ld. DR relied upon the impugned order passed by the Ld. CIT(A) and stated that assessee did not appear before the Ld. CIT(A) inspite of 13 opportunities given by the Ld. CIT(A). Therefore, the issues in dispute may be set aside to the Ld. CIT(A) to decide the same afresh, as per law, after giving adequate opportunity to the assessee.

4. I have heard both the parties and perused the orders of the revenue authorities including the common order passed in bunch of appeals by the ITAT, SMC Bench, New Delhi in ITA No. 6021/Del/2017 (AY 2010-11) & 06 Others in the case of M/s Richmond Educational Society vs. JCIT, Range-1, Noida & Others (in which Sh. Amit Saxena was the Respondent in ITA No. 6058/Del/2017) (AY 2011-12)), especially the paragraph no. 9 at page no. 7 of the Tribunal's order dated 29.11.2019 as pointed out by the Ld. Counsel for the assessee. I have also perused the impugned order, and I am of the view that assessee remained non-cooperative before the Ld. CIT(A) for 13 times and the Ld. CIT(A) lastly decided the issues in dispute. Keeping in view of the facts and circumstances of the present case, I am of the view that assessee remained non-cooperative before the Ld. CIT(A). Therefore, I have to respectfully follow the aforesaid ratio and hence, setting aside the issues in dispute to the file of the Ld. CIT(A) with the directions to decide the same, as per law, after giving adequate opportunity of being heard to the assessee. In compliance of the order, Ld. CIT(A) may bring on record Sh. Amit Saxena as Legal Representative of the assessee and decide the

appeal by passing the speaking order. In view of the non-cooperation of the assessee before the Ld. CIT(A) and in the interest of justice, I am also directing the assessee through his counsel to appear before the Ld. **Ld. CIT(A) on 21.04.2020 at 10.00 AM** for hearing. It is made clear that there is no need to issue the notice for 21.04.2020, because this order has already been pronounced in the Open Court.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 06.02.2020.

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

Dated:06-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi