

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos. 3006 & 3007/DEL/2019
[Assessment Year: 2009-10]

MAMCHAND,
C/O SANJAY PARASHAR, ADVOCATE,
47-A, FF, DEVIKA CHAMBER,
OPP. MAHALAXMI MALL, RDC,
RAJ NAGAR,
GHAZIABAD – 201 002
(PAN: BVQPM9373J)
[Appellant]

Vs. ITO, WARD 1(4),
GHAZIABAD

[RESPONDENT]

Assessee by: Shri Sahil Sharma, Advocate &
Shri Vinay Verma, Advocate
Revenue by : Ms. Parul Singh, Sr. DR.

ORDER

These appeals filed by the assessee are directed against the separate orders of the Ld. Commissioner of Income Tax [Appeals], Ghaziabad dated 30.11.2018 & 31.12.2018 pertaining to assessment year 2009-10 in quantum appeal as well as in penalty appeal. Since both the appeals were relating to same assessment year, hence, the same were heard together and are disposed of by this common order.

2. The grounds raised in ITA No. 3006/Del/2019 (AY 2009-10) read as under:-

1. That the order passed by the revenue authorities are against natural justice giving no adequate opportunity to the assessee, confirming the addition.

2. That the order of the AO u/s. 144 of the Act and order of the Ld. CIT(A) dismissing the appeal being barred by limitation on account of delay of 6 days deserved to be set aside.
 3. That the proceedings u/s. 147/148 applied to the case are bad in law.
 4. That even on merits no capital gain is leviable as the land sold is agricultural.
 5. That the appellant craves leave to modify/ amend or add any one or more grounds.
3. The grounds raised in ITA No. 3007/Del/2019 (AY 2009-10) read as under:-

1. That the revenue authorities erred both on facts and in law imposing a penalty of Rs. 12945000 u/s. 271(1)(c) of the I.T. Act.
2. That no penalty is leviable as the notice u/s. 274 read with section 271 dated 10.11.2016 is bad in law for want of specific charge against the assessee.
3. That even otherwise penalty has been levied by both authorities without giving adequate opportunity of hearing to the assessee.
4. That the penalty is not leviable as no tax is due because no capital gain is attracted as the asset sold is agricultural land.
5. That the appellant craves leave to modify/ amend or add any one or more grounds.

4. At the time of hearing Ld. Counsel for the assessee stated that in both the appeals Ld. CIT(A) has passed the ex parte impugned orders without providing sufficient opportunity to the assessee. He requested that the issues in dispute in both the appeals, may be set aside to the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

5. On the contrary, Ld. DR relied upon the impugned order.

6. I have heard both the parties and perused the orders of the authorities below. I am of the view that Ld. CIT(A) has not given sufficient opportunity to the assessee, therefore, in the interest of justice I am setting aside the issues in dispute to the Ld. CIT(A) to decide the same afresh after giving adequate opportunity of being heard to the assessee in both the appeals.

6.1 Keeping in view of the non-cooperation of the assessee, I am directing the assessee through his counsel to appear before the Ld. CIT(A) on **27.04.2020 at 10.00 am** for hearing. There is no need to issue the notice by the Ld. CIT(A) to the assessee, since this order has already been pronounced in the open court.

7. In the result, both the Appeals of the Assessee are allowed for statistical purposes.

The order pronounced on 19.02.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated:19-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi