

IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI 'E COURT' AT KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Godara, JM]

SA No. 03/Gau/2020
(Arising out of ITA No. 444/Gau/2019)
Assessment Year: 2011-12

Bulbul Devi Dugar.....**Appellant**
95, Labh Niwas,
Dr. Atmaram Merchant Road, Kalbadevi,
Mumbai - 400 002.
[PAN : ACKPD 7201 Q]

Vs

ITO, Ward-2, Dhubri.....**Respondent**
Aayakar Bhawan,
Assam - 783 301.

ITA No. 444/Gau/2019
Assessment Year: 2011-12

Bulbul Devi Dugar.....**Appellant**
95, Labh Niwas,
Dr. Atmaram Merchant Road, Kalbadevi,
Mumbai - 400 002.
[PAN : ACKPD 7201 Q]

Vs

ITO, Ward-2, Dhubri.....**Respondent**
Aayakar Bhawan,
Assam - 783 301.

Appearances by:

None appearing on behalf of the Assessee.

Shri Jayanta Mridha, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 14, 2020

Date of pronouncing the order : February 14, 2020

ORDER

PER P.M. JAGTAP, VICE PRESIDENT

By this stay application, the assessee is seeking stay of outstanding demand of Rs. 1,39,500/- for A.Y. 2011-12 and the same is being disposed of along with the corresponding appeal of the assessee being ITA No. 444/Gau/2019.

2. At the time of hearing of this stay application fixed today, none has appeared on behalf of the assessee. The Ld. DR, however has fairly pointed out that the corresponding appeal of the assessee being ITA No. 444/Gau/2019 which is directed against the order of ld. CIT(A), Guwahati – 2 dated 16.08.2019 passed ex-parte and involves the small issue can itself be heard and disposed of. Accordingly, the appeal is heard and it is being disposed of after hearing the arguments of the ld. DR.

3. The assessee in the present case is an individual. In response to the notice issued u/s 148 of the Income Tax Act, 1961, on the basis of the AO's reasons to believe that the assessee had arranged bogus long term capital gain of Rs. 5,20,625/- in the penny scrip of Twenty First Century India Ltd., the return of income for the year under consideration was filed by the assessee on 28.03.2018 declaring a total income of Rs. 1,57,717/-. In the assessment completed u/s 143(3)/147 of the Act vide an order dated 26.12.2018, the Assessing Officer, after discussing the outcome of enquiry and investigation conducted by the department in detail, treated the long term capital gain of Rs. 5,20,625/- as bogus and added the said amount to the total income of the assessee u/s 68 by treating the same as unexplained cash credit. He also made a further addition of Rs. 15,619- u/s 69C being commission @ 3% allegedly paid by the assessee for obtaining the bogus entry on account of long term capital gain. Accordingly, the total income of the assessee was determined by the AO for the year under consideration at Rs. 6,93,961/-.

4. Against the order passed by the AO u/s 143(3)/147, an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the ld. CIT(A) dismissed the said appeal vide his appellate order dated 16.08.2019 passed ex-parte and confirmed the additions made by the AO by passing a detailed order on merit. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of the ld. DR and also perused the relevant material available on record. It is observed that even though the notices of the hearings fixed before the ld. CIT(A) were stated to be issued to the assessee, there is nothing in the impugned order of the ld. CIT(A) to show that any of the said notices was ever served on the assessee. In our opinion, the assessee, therefore, cannot be said to have been given proper and sufficient opportunity of being heard by the ld. CIT(A) before disposing the appeal of the assessee vide his impugned order passed ex-parte. Even the ld. DR has not disputed this position which is clearly evident from the record. We, therefore, set aside the impugned order passed by the ld. CIT(A) ex-parte and remit the matter back to him for disposing of the appeal of the assessee afresh after giving the assessee proper and sufficient opportunity of being heard.

6. As a result of disposal of the corresponding appeal of the assessee being ITA No. 444/Gau/2019, the stay application filed by the assessee

being S.A. No. 03/Gau/2020 has become infructuous and the same is accordingly dismissed.

7. In the result, the stay application filed by the assessee is dismissed while the appeal filed by the assessee is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 14th February, 2020

Sd/-

(S.S. Godara)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
VICE PRESIDENT

Dated: 14/02/2020

Biswajit, Sr. PS

Copy of order forwarded to:

1. Bulbul Devi Dugar, 95, Labh Niwas, Dr. Atmaram Merchant Road, Kalbadevi, Mumbai – 400 002.
2. ITO, Ward – 2, Dhubri.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Gauhati Benches