

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA No. 7402/DEL/2018  
[Assessment Year: 2009-10]

MANJU TYAGI,  
VILLAGE & PO-MAKANPUR,  
INDRAPURAM,  
GHAZIABAD  
UTTAR PRADESH-201014  
(PAN: BCRPT4976L)  
[Appellant]

Vs. ITO, WARD 1(4),  
GHAZIABAD

[RESPONDENT]

Assessee by: Sh. Sahil Sharma, Advocate & Sh.  
Vinay Verma, Advocate

Revenue by : Ms. Parul Singh, Sr. DR.

**ORDER**

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax [Appeals], Aligarh dated 18.09.2018 pertaining to assessment year 2009-10 on the following grounds:-

1. That on peculiar facts and circumstances of the present case the addition of Rs. 1800000/- to the income of assessee on account of alleged sale of immovable property is unjustified.
2. That the alleged sale deed of the property which forms the basis for the said addition has been declared invalid and set aside by a competent Civil Court, which degree has become final as therefore, cannot be considered in law for making said addition.
3. That on the facts and evidence on record, it is not established that any money was received by assessee in cash or by cheque from buyers on account of the sale of property.

4. That once the alleged sale deed has been set aside by a competent Court no effect or consequence emanating from the same, can be considered while determining the question of capital gains/ transfer.
5. That the appellant craves leave to modify/amdn or add any one or more grounds.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing Ld. Counsel for the assessee stated that AO has not given sufficient opportunity to the assessee and passed the assessment order dated 23.12.2016 u/s. 144/147 of the Income Tax Act, 1961. He further stated that assessee is having all the necessary evidences for substantiating the claim before the revenue authorities, if this Bench grants an opportunity to the assessee to do the same. He requested that the issues in dispute may be set aside to the Assessing Officer to decide the same, afresh, as per law, after giving opportunity of hearing to the assessee as well as for production of all the necessary evidences for substantiating the claim of the assessee before the Assessing Officer. He further stated that the alleged sale deed of the property which forms the basis for the said addition has been declared invalid and set aside by a Competent Civil Court, which decree has become final as therefore cannot be considered in law for making the said addition. He further stated that it is not established that any money was received by the assessee in cash or by cheque from buyers on account of the sale of property.

4. Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the orders passed by the revenue authorities alongwith the Assessee's Paper Book containing pages 1-56 in which he has attached the copy of reasons recorded on 21.1.2016 for reopening the assessment; copy of written submission dated 5.6.2018 filed before Ld. CIT(A); copy of remand report dated

11.7.2018; copy of rejoinder dated 1.9.2018 alongwith affidavit filed before Ld. CIT(A); copy of sale deed dated 18.12.2008 and copy or court order dated 31.3.2018 passed by ACJ (SD) Court NO.3, Ghaziabad, which are very vital and essential, have not been properly considered by the lower authorities. I also find that AO has also passed the assessment order u/s. 144/147 of the I.T. Act, 1961 without giving sufficient opportunity to the assessee for substantiating the claim. Therefore, in the interest of justice, I am setting aside the issues in dispute to the Assessing Officer with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee and consider all the documents / evidences filed in the shape of paper book, as discussed above to substantiate the claim of the assessee.

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

The order pronounced on 02.03.2020.

Sd/-

**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Dated:02-03-2020

SRB

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi