

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6242/DEL/2014
[Assessment Year: 2011-12]

VIJAY KUMAR JAIN,
PROP. M/S DEEPAK PAPER MART,
621/9, VISHWAS NAGAR,
(CHOWK 18 QRT),
SHAHDARA,
DELHI - 110 032
(PAN: AAAPJ0874D)
[Appellant]

Vs. ITO, WARD 29(2),
NEW DELHI

[RESPONDENT]

Assessee by: Sh. Dinesh Mohan Sinha, Adv. &
Sh. Saroj Kumar Singh, Adv.
Revenue by : Mr. Pradeep Singh Gautam,
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 12.09.2014 pertaining to assessment year 2011-12 on the following grounds:-

1. Because the order is bad in law and facts of the case since the income from selling the plot was shown in the profit and loss account as business income while the ITO has assessed income under the head capital gain.
2. Because the Ld. CIT was wrong to dismiss the ground on the basis that no evidence adduced by the appellant for not serving the statutory notice.
3. Because the Ld. CIT was wrong to observe that the ground is general and subjective in nature require no adjudication.
4. Because the Ld. CIT wrong to observe that the stamp valuation authority amount is to be accepted however the same is only for the purpose of stamp duty and that can be the base of assessment.
5. Because the interest disallowed and confirmed by the Ld. CIT is bad since it is without any basis.

Prayer:-

It is therefore most humbly prayed that the addition made may kindly be deleted and / or any other order which this Hon'ble Court may deem fit may kindly be granted.

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

3. At the time of hearing, Ld. Counsel for the assessee stated that he is not pressing other grounds raised by the assessee. He further stated that at the time of filing the appeal, issue regarding applicability of section 50C of the Act in the case of the assessee is required thorough consideration at the level of the Assessing Officer. He requested that the issue involved in additional ground of appeal may be set aside to the Assessing Officer to decide the same, as per law, after giving adequate opportunity of being heard to the assessee.

4. Ld. DR did not raise any serious objection on the request of the Id. Counsel for the assessee. He stated that assessee should not raise any other ground before the Assessing Officer and AO should only required to decide whether Section 50C of the Act is applicable in the case of the assessee or not.

5. Ld. Counsel for the assessee straight away admitted the aforesaid contention of the Ld. DR and stated that he is not pressing other issues and AO will only require consideration on the applicability of section 50C of the I.T. Act in the case of the assessee in respect of the lease hold right in land.

6. After hearing both the parties and perusing the records, especially the orders passed by the revenue authorities and the grounds raised by the assessee in which the assessee has raised legal grounds. But at the time of hearing he is not pressing the same, but his request for setting aside the issue of applicability of section 50C of the I.T. Act in respect of lease hold rights in land requires thorough consideration at the level of the Assessing Officer. Therefore, in the interest of justice, I am setting

aside the issue involved in the additional ground i.e. "Whether the AO as well as Ld. CIT(A) erred in law and on facts in not appreciating that the provisions of section 50C of the Act are not applicable in respect of lease hold right in land", this issue may be considered and decided by the Assessing Officer afresh, after giving adequate opportunity of being heard to the assessee, by adopting the prescribed procedure under the law.

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

The order pronounced on 06.03.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated:06-03-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi