

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 7400/DEL/2018
[Assessment Year: 2010-11]

DEEPAK TYAGI,
S/O SH. SATISH TYAGI,
H.NO. A-318, NAND GRAM,
GHAZIABAD
UTTAR PRADESH-201001
(PAN: AFJPT0205J)
[Appellant]

Vs. ITO, WARD 1(2),
Ghaziabad
Room No. 230, CGO Complex-I,
Hapur Chungi, Ghaziabad

[RESPONDENT]

Assessee by: Sh. Anoop Sharma, Advocate &
Sh. Sanjay Prashar, Advocate

Revenue by : Sh. C.P. Singh, Sr. DR.

ORDER

This appeal is filed by the Assessee against the order of the Ld. Commissioner of Income Tax [Appeals], Ghaziabad dated 28.09.2018 pertaining to assessment year 2010-11 on the following grounds:-

1. That on peculiar facts and circumstances of the present case, the addition of Rs. 2818125/- to the income of assessee on account of alleged purchase of immovable property is justified.
2. That the proceedings u/s. 147/148 and 144 of the I.T. Act are bad on facts and in law and orders passed by the Ld. Authorities may be set aside.
3. That the Ld. CIT(A) was wrong in holding that the affidavit filed by the assessee stating that he did not purchase 1/4th share of Rs. 2818125 nor made any payment thereof could not be relied upon while holding that the assessee has given this money of purchase price.

4. That the Ld. CIT(A) erred in holding that the above affidavit stood believed by the sale deed available with a AO and therefore had no evidentiary value and could be relied upon.
5. The issue whether the assessee purchased 1/4th share in the property needs investigation and further inquiries in view of the statement on oath made by the assessee in respect of the property.
6. That in case of a Benami transaction, parties relating to same should be examined and investigated before giving a final finding which is absent here, hence the orders need to be set aside.
7. That the appellant craves leave to modify/ amend 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 23.11.2017 u/s. 144 read with section 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.

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 1-63 in which he has attached the copy of reasons recorded on

03.3.2017 for reopening the assessment and order sheet; copy of written submission dated 25.9.2018 filed before Ld. CIT(A); copy of application of additional evidence dated 25.9.2018 alongwith affidavit and copy of bank account filed before Ld. CIT(A); copy of sale deed dated 24.12.2009, which have not been properly considered by the lower authorities, however, the same are very vital and essential. I 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 17.03.2020.

Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Dated:17-03-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi