

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 9682/DEL/2019 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Shuma Kalra A-28, Ashok Vihar, Phase-1 New Delhi AAIPK8142R (APPELLANT)	Vs	ITO Ward-34(3) New Delhi (RESPONDENT)
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Appellant by	Sh. Lalit Mohan, CA
Respondent by	Sh. S. K. Chaudhary, CIT(DR)

Date of Hearing	08.12.2020
Date of Pronouncement	08.12.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 31/10/2019 passed by CIT(A)-12, New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

“1. That the learned Commissioner of Income Tax (Appeals)-12, New Delhi has erred both in law and on facts in upholding the determination of total income of the appellant at Rs. 1,16,03,132/- as against declared income of Rs. 11,75,710/- in an order of assessment dated 18.12.2018 under section 143(3)/263 of the Act.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in disallowing deduction of Rs. 97,98,170/- under section 54F of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) while concluding that appellant has not complied with provisions of section 54F of the Act, has failed to appreciate the factual matrix of case of the appellant and the explanation and evidence placed on record and as such, his adverse findings and conclusions are either factually incorrect or contrary to law and hence not tenable.

2.2. That various adverse findings and conclusions recorded by the learned Commissioner of Income Tax (Appeals) and the learned Assessing Officer are factually incorrect and contrary to record, legally misconceived and untenable.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming an addition of Rs. 6,29,252/- representing alleged deemed rental income in respect of Unitech World Gurgaon Property under section 23(4)(b) of the Act.

3.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that detailed explanation and reply furnished of the appellant and establish inapplicability of section 23 of the Act before the learned Assessing.

4. That the learned Commissioner of Income Tax

(Appeals) has failed to appreciate that an appeal against an order passed on 26.3.2018 u/s 263 of the Act is being pending before Hon'ble Income Tax Appellate Tribunal and therefore action of dismissal of appeal against impugned order dated 18.12.2018 passed u/s 143(3) of the Act passed in consequence thereof, is premature and thus untenable.

5. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that an appeal against an order passed on 26.3.2018 u/s 263 of the Act is being pending before Hon'ble Income Tax Appellate Tribunal and therefore action of dismissal of appeal against impugned order dated 18.12.2018 passed u/s 143(3) of the Act passed in consequence thereof, is premature and thus untenable.*

6. *That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in proceedings to dispose of the appeal ex parte without granting any fair and proper opportunity of being heard to the appellant.*

6.1 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was reasonable cause for the appellant for not causing appearance on the dates fixed for hearing and as such disposal of the appeal without granting fair, meaningful and proper opportunity is untenable.*

6.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that non appearance of the appellant on the date of hearing was neither intentional nor*

deliberate and is not a case where appellant is not interested in prosecuting its appeal.

7. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in upholding the levy of interest u/ s 234B and u/s 234D of the Act which are not leviable on the facts of the appellant.”

3. Income Tax Return declaring income of Rs. 11,75,710/- was e-filed by the assessee on 22.07.2013. It was processed u/s 143(1) at a returned income. The case was selected for scrutiny under CASS Assessment order u/s 143(3) of IT Act, 1961 is passed on 08/06/2013 whereby return income was accepted. Subsequently, order u/s 263 is passed on 28.03.2018 on proposal of JCIT, Range- 34, New Delhi whereby the case was set aside holding that the assessment order dated 8/6/2015 is erroneous in as much as it is prejudicial to the interest of revenue. The Assessing Officer as per directions under Section 263 verified the details and made afresh assessments. Finally the Assessment Order was passed on 18.12.2018 thereby assessing the income at Rs. 1,16,03,132/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) has not given proper opportunity of hearing and passed the ex-parte order. The Ld. AR further submitted that the details furnished by the Assessee during the fresh assessment proceedings as per the directions given in Section 263 order, were not taken into account by the Assessing Officer and the CIT(A) has also not considered this aspect. Therefore, the Ld. AR prayed that the matter may be remanded back to the file of the Assessing Officer for fresh adjudication.

6. The Ld. DR relied upon the Assessment Order and the order of the

CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the order passed by the CIT(A) is ex-parte order and the assessee was not given proper opportunity of hearing. Besides this aspect, the Assessing Officer has also not taken cognizance of the details which were produced by the Assessee during the fresh assessment proceedings as per the directions of the order under Section 263 of the Income Tax Act, 1961. Therefore, it will be appropriate to remand back this matter to the file of the Assessing Officer for fresh adjudication as per the directions given under Section 263 order and the Assessing Officer should make proper enquiries and verifications to that extend. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The assessee should also co-operate with the assessment proceedings with the Assessing Officer. Hence, appeal of the assessee is partly allowed for statistical purpose.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

9. The order is pronounced in the open court at the time of hearing on 08.12.2020 in presence of both the parties.

Order pronounced in the Open Court on this 08th day of DECEMBER, 2020

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 08/12/2020
R. Naheed *

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI