

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No. 3946/Del/2019
Asstt. Year 2009-10

Rama Gupta, 111, Ansal Garden Enclave near imperial marriage home, Hapur Road, Ghaziabad Uttar Pradesh Pin 201 301 PAN AFKPG9075L	Vs.	ITO Ward -2(2) Ghaziabad
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Vinod Sharma, Sr. DR
Date of Hearing	31/12/2020
Date of pronouncement	07/01/2021

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the ex parte order dated 31st January, 2019 passed by the Ld. CIT (A)-Ghaziabad relating to assessment year 2013-14.

2. Although a number of grounds have been raised by the assessee these all relate to the ex parte order of the Ld. CIT(A) in confirming the addition made by the AO amounting to Rs. 32,00,000/- and also the validity of reassessment proceedings.

2. Facts of the case, in brief, are that the assessee is an individual. On the basis of AIR information that the assessee has sold immovable property of Rs. 32,00,000/- during the financial year 2008-09 relevant to assessment year 2009-10 a verification letter was issued by the AO to the assessee. However, since there was no compliance from the side of the assessee, the case of the assessee was reopened by issuing notice u/s 148 dated 21st March, 2016. Since there was no compliance to the said notice the AO issued notice u/s 142(1) dated 17th August 2016 along with the questionnaire. Again there was no compliance. The AO therefore, issued final show cause notices on 25th October, 2016 and 16th December 2016 fixing the date of hearing on 2.11.2016 and 23rd December 2016 respectively. However, still there was no compliance. Therefore, the AO in the order passed u/s 147/144 of the Act completed the assessment determining the total income of the assessee at Rs. 32,00,000/- as long term capital gain which is chargeable to tax @ 20%.

2.1 Before the Ld. CIT(A), the assessee apart from challenging the addition on merit challenged the validity of the reassessment proceedings. However, since there was no compliance from the side of the assessee, the Ld. CIT(A), in the ex parte order passed by him dismissed the appeal by observing as under :-

“2. The appellant filed the appeal on 16.06.2017 which is found to be delayed by more than 4 months and the assessment year mentioned in Form 35 is not as per order enclosed with it. Accordingly, a notice for explaining the defect was sent to the appellant on 21.12.2018 at the address given in Form 35 for the communication through the speed post. The appellant filed his reply for removing the defect is as under :-

“With reference to above notice issued, an inadvertent mistake has been made in form no. 35 wherein A.Y. has been wrongly entered AY 2009-10 instead of AY 2013-14.

However, in the statement of facts and grounds of appeals submitted the assessee has mentioned correct AY for which appeal is referred i.e AY 2009-10.

The same being an inadvertent mistake, kindly ignore and appeal assessment year be treated as AY 2009-10 instead of AY 2013-14.”

2.1 The defect in assessment year is a non curable defect. Moreover the appeal is delayed by more than 4 months. The appeal suffers non curable defect, even the explanation given is not corroborating the facts. Considering above facts and circumstances this appeal preferred by the appellant is treated as non-est being defective.”

3. Aggrieved with such order of the Ld. CIT(A) the assessee appeared before the Tribunal.

4. None appeared on behalf of the assessee at the time of hearing. However , considering the totality of the facts of the case, the appeal of the assessee is being decided on the basis of material available on record and after hearing the Ld. DR . A perusal of the order of the Ld. CIT(A) shows that the appeal has been decided ex parte. Although the assessee has filed written submission explaining the defect in mentioning the assessment year as an inadvertent error, I find the Ld. CIT(A) without

considering the same summarily rejected the appeal as defective and further observing that there is delay of more than four months in filing of the appeal. No opportunity whatsoever has been given by the Ld. CIT(A) to the assessee about the delay in filing of the appeal. Considering the totality of the facts of the case and in the interest of justice I deem it appropriate to restore the issue to the file of the Ld. CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the appeal as per fact and law. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate its case failing which the Ld. CIT(A) is at liberty to pass appropriate order as per law. I hold and direct accordingly. The appeal filed by the assessee is accordingly allowed for statistical purposes.

5. In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 07 /01/2021.

sd/-

**(R.K. PANDA)
ACCOUNTANT MEMBER**

Dated: 07/01/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi