

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

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 3947/DEL/2016 (A.Y 2012-13)
(THROUGH VIDEO CONFERENCING)**

Rekah Devi C/o. M/s RRA Tax India, D-28, South Extension, Part-1 New Delhi AANPD0639P (APPELLANT)	Vs	DCIT Central Circle-32 New Delhi (RESPONDENT)
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Appellant by	Sh. (DR) Rakesh Gupta, Adv
Respondent by	Sh. Shiv Swaroop Singh, Sr. DR

Date of Hearing	29.07.2021
Date of Pronouncement	09.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 21/05/2016 passed by CIT(A)-30, New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:-

1. "1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,52,99,100/- on account of alleged capital gain and that too without observing the principles of natural justice.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.2,52,99,100/- on account of alleged capital gain is bad in law and against the facts and circumstances of the case.*
 3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.1,68,000/- on account of deemed rent received and that too without observing the principles of natural justice.*
 4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.1,68,000/- on account of deemed rent received is bad in law and against the facts and circumstances of the case.*
 5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 234A 234B, 234C and 234D of Income Tax Act, 1961.*
3. The assessee is an individual filed her return of income for Assessment Year 2012-13 declaring income of Rs. 5,747/- assessment order u/ 143(3) was completed vide order dated 25/3/2013 at total income of Rs. 2,54,72,850/- thereby making additions on account of long term capital gain amounting to Rs.2,52,99,100/- and deemed rent received amounting to Rs. 1,68,000/-.

4. Being aggrieved by the penalty 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 assessee had mortgaged the property with Indian Over Seas Bank as a guarantor against the loan taken by Vikas Chain Company Pvt. Ltd. from the said Bank. The Vikas Chain Company Pvt. Ltd. became NPA. The Indian Over Seas Bank forfeited the same property and disposed of the property. Thus, the assessee never sold or transferred the property and, therefore, the provisions of Section 2(47) (v) of the Income Tax Act and Section 53A of the Transfer of Property Act, 1982 are not applicable to the assessee. The Ld. AR further submitted that the possession of the said property was with M/s Vikas Chain Company since Financial Year 2010-11 and the sale consideration was received in the Financial Year 2011-12 whereas the sale deed was executed in Financial Year 2012-13. Thus, the Ld. AR submitted that the Assessing Officer as well as CIT(A) ignored all these relevant facts. As regards Ground No. 3 & 4, the Ld. AR submitted that there was a dispute going on with M/s Vikas Chain Company Pvt. Ltd. in 2010 and the matter went to Senior Civil Court Teeshazari, Delhi. Hence, there is no rental income during the year under consideration. Although, finally the dispute was settled and the final rent was fixed at Rs.7,810/- per month. The Ld. AR submitted that as and when the rent is received, the assessee will offer the same to tax with the authorities.

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 the material available on record. As regards Ground No. 1 & 2, from the evidences produced before the Assessing Officer and the CIT(A) as well as before us, it emerges that the assessee never received any amount. The property No. 2501, Gali No. 8, Carol Bagh, New Delhi belonging to the assessee was mortgaged in the bank (Indian Overseas Bank, Janpath, New Delhi) as guarantor against the loan taken by M/s Vikas Chain Company Pvt. Ltd. from the said Bank. The bank enforced

the recovery of loan against M/s Vikas Chain Company Pvt. Ltd. by sale of the property mortgaged with it. The Indian Overseas Bank forfeited the said property and sold the said property under SARFAESI Act, 2002 by the Bank and out of total sale consideration of Rs. 2,60,00,000/- nothing was given to the assessee as the Bank has an overriding title over the property. Thus, the entire sale proceeds were adjusted against the loan taken by M/s Vikas Chain Company Pvt. Ltd. Since the assessee lost her property without any consideration, the assessee has shown the same as bad debts to the extent of the cost of the said property. Thus, the said amount cannot be considered as long term capital gain in the hands of the assessee. The Ld. AR relied upon the decision of the Hon'ble Supreme court in case of CIT Vs. Balbir Singh Maini (2017) 86 taxmann.com 94 (SC) which is apt in assessee's case, as in the said case also the income from capital gain on a transaction which never materialized was treated as hypothetical income and the Hon'ble Supreme Court held that there was no profit or gains arose from the transfer of capital asset so as to attract Section 45 & Section 46. Thus, Ground No. 1 & 2 of the assessee's appeal are allowed. As regards Ground No. 3 & 4, the rental income has not been received by the assessee in the present assessment year. The part of property situated at Delhi was on rent to M/s Shri Chain Company Pvt. Ltd. since 2004 onwards. The dispute started between the assessee (owner) and M/s Shri Chain company Pvt. Ltd. (tenant) in 2010 and the matter went in the Court of Senior Civil Court Teeshazari, Delhi. Since then, the said company did not pay any rent to the assessee. Therefore, the assessee has not shown rental income in the present assessment year in the computation of income. The dispute was settled and final rent was fixed at Rs. 7,810/- per month and the Ld. AR submitted that the same will be shown in her income tax return as and when the said amount will be received. Therefore, we direct the assessee to offer the same to Revenue authorities when it will be received. We further direct the Assessing Officer to verify the same as per the Income Tax Statute. Thus, Ground No. 3 & 4 are partly allowed for statistical purpose. As regards Ground No. 5, the same is consequential, hence not adjudicated at this juncture.

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

Order pronounced in the Open Court on this 09th Day of September, 2021.

Sd/-

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

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 09/09/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

