

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1768/Del/2020  
Assessment Year: 2010-11

Sangeeta,  
A-190, 3<sup>rd</sup> Floor,  
Gautam Nagar,  
New Delhi.

Vs. ITO,  
Ward-53(5),  
New Delhi.

PAN: BLS7011K

(Appellant)

(Respondent)

Assessee by	:	Shri Lokendrajit Paonam, CA
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	04.08.2021
Date of Pronouncement	:	14.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 25<sup>th</sup> August, 2020 of the CIT(A)-18, New Delhi, relating to Assessment Year 2010-11.

2. Facts of the case, in brief, are that the assessee is an individual and has not filed her return of income. Information was received by the AO that the assessee has sold two immovable properties during the F.Y. 2009-10. A notice for non-filing was issued to the assessee at her last known address requiring her to file the details of purchase of immovable properties, but, no reply was filed by the

assessee. Therefore, the AO, after recording reasons, reopened the assessment u/s 147 of the IT Act, 1961 and issued notice u/s 148 of the Act dated 28<sup>th</sup> March, 2017 which was issued and served on the assessee. The assessee, in response to the notice u/s 148, filed her return of income on 14<sup>th</sup> July, 2017 declaring nil income. The AO, thereafter, issued statutory notices u/s 143(2) and 142(1) of the Act. The assessee was asked to explain the sale of the properties. It was submitted that during the year she has sold only one property i.e., 190-A/1, Gautam Nagar, which was inherited by her along with her sister Mrs. Geeta and the consideration has been equally divided between them i.e., Rs.12 lakh each which was further re-invested by them in the purchase of property and building the same. The assessee submitted documents regarding sale/purchase of properties on 17<sup>th</sup> August, 2017 through dak. The AO observed that the property in question was purchased by the mother of the assessee Late Smt. Usha Rani vide agreement to sell dated 4<sup>th</sup> September, 1992 for a total consideration of Rs.1,25,000/- and the property was sold by the assessee vide sale deed dated 17<sup>th</sup> April, 2009 for a total consideration of Rs.24 lakhs. However, there is no document produced before him to substantiate that Rs.12 lakh has been given by the assessee to her sister. He further noted that as per the sale deed dated 17<sup>th</sup> April, 2009, the assessee and her sister Smt. Geeta have been mentioned to be Class-I legal heirs to the said property though the documents and the sale deed have been found to be signed by the assessee only. According to the AO, Mrs. Geeta had already relinquished her half undivided share in the property.

2.1 Subsequently, the assessee was asked to furnish the computation of capital gain and also documentary evidence regarding sharing of sale consideration with her sister and complete documents regarding utilization of capital gain. Since there was no compliance from the side of the assessee, the AO issued a notice asking the assessee why assessment should not be completed u/s 144 of the IT Act by determining the long-term capital gain at Rs.16,29,740/- the computation of which was as under:-

Sale consideration	Rs.24,00,000/-
Less:	
Indexed cost of acquisition	
1,25,000/223 (FY 1992-93)*632 (FY 2009-10)	Rs.3,54,260/-
Long Term Capital Gains	Rs.20,45,740/-
Amount used for purchase of new property (Eligible for 54 deduction)	Rs.4,16,000/-
Net LTCG (to be added in the income)	Rs.16,29,740/-

3. Since the assessee did not appear before the AO despite notice issued u/s 144 of the Act, the AO made addition of Rs.16,29,740/- to the total income of the assessee as long-term capital gain.

4. In appeal, the assessee filed certain additional evidences before the CIT(A) who forwarded the same to the AO for a remand report. The assessee was confronted with the remand report who filed a rejoinder to the said remand report. After considering the remand report by the AO and the rejoinder of the assessee to such remand report, the ld.CIT(A) upheld the action of the AO. While doing so, he noted that the assessee has not filed the return and subsequently u/s 148 proceedings claimed water expenses for repair and

deduction u/s 54 which was elaborately rebutted by the AO in the remand report.

Therefore, the addition made by the AO are clearly substantiated and, therefore, the order of the AO was confirmed by the CIT(A).

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

Ø1A. That the learned CIT (A) has erred in law and on facts in dismissing the appeal by merely confirming the action of the AO without discussing the merits of the case and such an approach of the first appellate authority being against the legislative mandate contained in section 250 (6) of the It Act, vitiates the impugned order and the same is liable to be set aside.

B. That the learned CIT (A) has failed to appreciate that it was obligatory for the appellate authority to pass a speaking order deciding the issues raised stating the reasons for the decision taken as mandated by section 250(6) of the IT Act and the impugned order passed without dealing with any of the grounds of appeal raised, is unsustainable and liable to be set aside being non speaking and contrary to the provisions of law.

C. That the impugned order of the CIT (A) being suffered from non application of mind in that return filed by the appellant cognisance of which had duly been taken of by the AO, has been considered as no return filed and deduction claimed by the appellant u/s 54 with respect to investment made on the construction of residential property has also been considered as water expenses for repairs by the learned CIT(A), is not tenable and unsustainable.

D That the learned CIT(A) has failed to appreciate that valuation report of the Departmental Valuation officer (DVO) obtained by the AO u/s 142A of the IT Act estimating the cost of construction at Rs. 17,28,600/- fully supports and vindicates the stand of the appellant with regard to investment on new construction and the impugned addition of Rs. 16,29,740/- is liable to be deleted on this ground alone.

E That on the facts and circumstances of the case, the learned CIT (A) ought to have directed to provide a copy of the valuation report of the DVO to the appellant as per the mandate of section 142A(6) regardless of its not having been used against the assessee.

3 That the appellant craves leave to add, alter, modify or delete any ground of appeal at the time of hearing of the appeal and the grounds of appeal are without prejudice to each other.ö

6. I have heard the rival arguments made by both the sides and perused the record. I find, due to non-substantiation of utilization of the capital gain for purchase of the property and non-distribution of the share of the money to Mrs. Geeta, the sister of the assessee who has already relinquished her half undivided share in the property, the AO determined the long-term capital gain of the assessee at Rs.16,29,740/-. I find, the ld.CIT(A), after obtaining a remand report from the AO and rejoinder of the assessee to such remand report, upheld the action of the AO. It is the submission of the ld. Counsel for the assessee that the ld.CIT(A) has not considered properly the various submissions made before her and has passed a very sketchy order. It has also been his submission that a perusal of the order of the CIT(A) shows that she has simply reproduced the remand report of the AO and came to the conclusion that addition made by the AO is clearly substantiated in view of the remand report. I find some force in the above arguments of the ld. Counsel for the assessee. I find, the ld.CIT(A) in her findings has simply reproduced the remand report and has upheld the action of the AO without considering the various submissions made by the assessee and without going through the various details. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to consider the various details filed by the assessee and pass a speaking order as per fact and law after giving due

opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly, allowed for statistical purposes.

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

The decision was pronounced in the open court on 14.09.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 14<sup>th</sup> September, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi