

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA Nos.9763 & 9764/Del/2019
Assessment Year: 2008-09

Deepak Tyagi
(L/H of Late Gopal Singh),
R-2, 2nd Floor, Raj Kunj,
Raj Nagar,
Ghaziabad.

Vs. ITO,
Ward-1(2),
Ghaziabad.

PAN: AIOPT0410F

(Appellant)

(Respondent)

Assessee by	:	Shri Vipin Garg, Advocate
Revenue by	:	Shri R.K. Gupta, Sr. DR
Date of Hearing	:	04.08.2021
Date of Pronouncement	:	22.09.2021

ORDER

The above two appeals filed by the assessee are directed against the separate order dated 31.10.2019 of the CIT(A), Ghaziabad, relating to A.Y. 2008-09.

2. The assessee in both the appeals has challenged the ex parte order of the CIT(A) in confirming the addition made by the AO of Rs.30,50,000/- as short-term capital gain and, thereafter, levying penalty of Rs.9,78,915/- u/s 271(1)(c) of the Act.

3. Facts of the case, in brief, are that the assessee is an individual. The case of the assessee was reopened on the ground that the assessee sold immovable property situated at Vill. Makanpur, Indirapuram, Ghaziabad, for a sum of Rs.30,50,000/- on 3rd March, 2008. Since the land in question is a capital asset being situated within the municipal limits of Ghazabad Nagar Nigam, the AO held that income has escaped assessment and accordingly after recording reasons notice u/s 148 of the Act dated 23rd March, 2015 was issued. Subsequently, notice u/s 142(1) of the IT Act was also issued. However, there was no compliance from the side of the assessee. Therefore, the AO, in the order passed u/s 144/147 of the Act, determined the total income of the assessee at Rs.30,50,000/- as short-term capital gain.

4. The AO, thereafter, initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.9,78,915/-.

5. Since the assessee did not appear before the CIT(A) despite number of opportunities granted, the ld.CIT(A), in the *ex parte* order passed by her, dismissed the appeal filed by the assessee. Further, she noted that the assessee has enclosed the order of Shri Gopal Singh, s/o Shri Harvansh Singh, instead of filing the appeal in the capacity of legal heir of Late Gopal Singh, which, according to her, is a non-curable defect.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The ld. counsel for the assessee submitted that notice in this case was issued in the name of a dead person and, thereafter, the assessment order as well as the appeal order was passed *ex parte*. He submitted that in the interest of justice, the assessee should be given an opportunity to substantiate his case.

8. The ld. DR, on the other hand, submitted that despite repeated opportunities granted, the assessee or his legal heir did not avail of the opportunity and, therefore, the order of the CIT(A) should be upheld.

9. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that the assessment order was passed *ex parte* by the AO in absence of any compliance to the statutory notices issued by him. In the mean time, it is noted that Shri Gopal Singh, in whose name order u/s 144/147 of the Act has been passed has died. The ld.CIT(A) also has passed an *ex parte* order due to non-appearance of the assessee despite number of opportunities granted. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue back to the file of the AO with a direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the AO and substantiate his case without seeking any adjournment under any pretext failing which the AO is at liberty to pass appropriate order as per law. I hold and direct accordingly. The quantum appeal filed by the assessee is accordingly allowed for statistical purposes.

10. Since the quantum appeal is being restored back to the file of the AO, the penalty levied u/s 271(1)(c) of the Act does not survive. Therefore, the penalty levied by the AO and sustained by the CIT(A) is deleted. However, the AO is at liberty to initiate fresh penalty proceedings after completion of the assessment as per law. I hold and direct accordingly.

11. In the result, both the appeal filed by the assessee are allowed for statistical purposes.

The decision was pronounced in the open court on 22.09.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 22nd 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