

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.3818/Del/2016
Assessment Year: 2006-07

Uma Gupta,
Arens Bimaldeep Complex,
Behind Pocket-3, Vasant Kunj,
New Delhi.

Vs. ACIT,
Central Circle-9,
New Delhi.

PAN: AAHPG0455E

(Appellant)

(Respondent)

Assessee by	:	Shri Rajeshwar Painuly, CA
Revenue by	:	Shri Ajay Kumar, Sr. DR
Date of Hearing	:	05.10.2021
Date of Pronouncement	:	05.10.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the *ex parte* order dated 23rd March, 2016 of the CIT(A)-25, Delhi, relating to Assessment Year 2006-07.

2. Facts of the case, in brief, are that a search and seizure and survey operation u/s 132/133A of the IT Act, 1961 were conducted on 17th August, 2011 in the case of the assessee along with other cases of the group at various residential and business premises. In response to notice u/s 153A, the assessee

filed the return of income declaring income from house property at Rs.1,26,000/-, income from bank interest at Rs.241/-, and income from dividend at Rs.53,050/-. During the course of assessment proceedings, the AO observed that the assessee has declared capital loss on sale of property at Rs.32,536/- giving note that the indexed cost of the property is more by an amount of Rs.32,536/- than the sale consideration of the land. However, in the balance sheet, the assessee has credited a sum of Rs.80,032.67 as profit on sale of land. In absence of any proper explanation from the side of the assessee, the AO treated the long-term capital gain at Rs.80,032.67 and determined the total income of the assessee at Rs.1,71,997/-, after allowing deduction u/s 80C at Rs.34,276/- and allowing the exemption u/s 10(34) of the Act on dividend income at Rs.53,050/-.

3. Since the assessee did not appear before the CIT(A), the Id.CIT(A), in the ex parte order, dismissed the appeal filed by the assessee. Although he has dismissed the appeal for non-prosecution, however, he has decided the issue on merit also by giving the following reasons:-

8. Even on merits, the Appellant has no case. The case was examined and it was found that none of the Grounds of Appeal can be allowed and all the Grounds have to be rejected.

9. It was claimed that no incriminating documents were found and that no proceedings had abated. It has also been claimed that the Assessment Order is arbitrary, illegal, bad in law and that there is violation of Principles of jurisprudence. However, the Appellant did not give any evidence or proper justification in support of such claims and evaded the proceedings when repeated opportunities were allowed. Hence such baseless claims have to be rejected. Ground No. 1 and 4 are hereby rejected.

10. It was observed by the Learned Assessing Officer that on Sale of Property, the Assessee has declared Capital Loss amounting to Rs. 32,536/-, giving note that indexed cost of the Property is more by the amount of Rs. 32,536/- than the Sale Consideration of the Land, but in the Balance Sheet, the Assessee has credited a sum of Rs. 80,032.67 as profit on Sale of Land. It was not explained to the Assessing Officer as to how the Assessee has claimed a Profit of Rs. 80,032.67 as a Loss of Rs.32,536/- and hence the Assessing Officer assessed the Long Term Capital Gain as Rs. 80,032/-. Even at the Appellate stage, the discrepancy was not resolved. As observed earlier, no compliance was made despite repeated opportunities being allowed to the Appellant in the appellate proceedings. There is nothing to show any infirmity in the order of the Assessing Officer who assessed Long Term Capital Gain on Sale of Land at Rs. 80,032/- and made an addition of the same amount to the Income of the Assessee. Accordingly, the addition of Rs. 80,032/- is hereby confirmed. Ground No. 2 of the Appeal is rejected.ö

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

ö1. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer without giving the adequate opportunity to the appellant.

2. The learned CIT (A) erred in law and on facts in dismissing the appeal against the order of assessing officer and confirming the addition of Rs. 80,032/- on account of capital gain despite the fact that no benefit of indexed cost of acquisition under proviso to section 48 of the Income Tax Act was allowed to the assessee. Moreover, no incriminating documents were found during the course of search and in respect of which no proceedings were abated. The addition was made purely on presumptive basis. Thus, order of the learned CIT(A), passed merely on surmises and conjecture should be reversed.

3. The learned CIT (A) erred in law and on facts in rejecting the ground of the appellant on non-applicability of provisions of Section 234B of the Income Tax Act despite the fact that said provisions are not applicable. Thus, order of the learned CIT (A), passed merely on surmises and conjecture should be reversed.

4. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.ö

5. The Id. Counsel for the assessee submitted that in the interest of justice the assessee should be given one final opportunity to substantiate his case.

6. The Id. DR, on the other hand, strongly opposed the arguments advanced by the assessee and submitted that the Id.CIT(A) has given five opportunities to the assessee to substantiate his case. However, the assessee never availed of the opportunities. Further, the Id. CIT(A) has decided the appeal on merit. He accordingly submitted that the order of the CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

7. We have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, due to non-submission of details regarding the capital loss of Rs.32,536/- against the sale of property, the AO made addition of Rs.80,032/- as long-term capital gain. However, it is not known when the property was purchased and when it was sold and what is the indexed cost of acquisition. The order of the AO is silent on all these vital aspects. Since the assessee did not appear before the CIT(A), the Id.CIT(A), in absence of any details, upheld the action of the AO in his ex parte order. Although sufficient number of opportunities were granted, the assessee did not appear before the CIT(A) for which the Id.CIT(A) was constrained to pass the ex parte order. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with a direction to

grant one final opportunity to the assessee to substantiate her case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) without seeking any adjournment under any pretext, failing which the ld.CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court at the time of hearing itself, i.e., on 05.10.2021.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 05th October, 2021

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi