

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.529/Del/2020
(Assessment Year : 2010-11)

Smt. Davander Tyagi S/o. Mr. Asha Ram, H-234, Shastri Nagar, Meerut PAN : AHNPK 3644 A	Vs.	ITO Ward – 1(2) Meerut
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Sabhya Kant, C.A. Shri Vinod Kumar Goel, Advocate
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	05.10.2021
Date of Pronouncement:	08.10.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 17.05.2018 of the Commissioner of Income Tax (Appeals)-Meerut relating to Assessment Year 2010-11.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO has noted that information was received from DDIT (Inv.) - 1, Meerut in connection with the enquiries related to a TEP against the assessee. AO has noted that during the year assessee donated an immovable property situated at Meerut as power of attorney holder on behalf of Smt. Rajni Sharma, Mumbai to his wife Smt. Geeta Rani. The said property was registered on 21.12.2009 with the Sub-Registrar, Meerut for Rs.56,72,000/- and Stamp duty of Rs.3,87,100/- was also paid. AO was of the view that payment of Stamp duty was out of undeclared source of income of the assessee. He accordingly issued notice u/s 148 of the Act on 29.03.2017 and thereafter, notices u/s 142(1) of the Act was issued which according to AO had remained un-complied by the assessee. Thereafter in the assessment order passed u/s 144/147 of the Act dated 29.11.2017 AO determined the total income at Rs.5,84,510/- by *inter alia* making addition of Stamp duty amounting to Rs.3,87,100/- by holding the Stamp duty paid to be out of undeclared source. Aggrieved by order of AO, assessee carried the matter before the CIT(A), CIT(A) vide order dated 17.05.2018 in Appeal No.199/2017-18 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- “1. *That the petitioner gifted an immovable property to his wife Smt. Geeta Rani in the capacity of power of attorney holder on behalf of Smt. Rajni Sharma W/o. Shri Yogendra Kumar Sharma R/o Chad No.8, Subhash Nagar, Jogeshwari, East Mumbai who is the sister of his wife and a relative within the meaning of Section 56(2) of Income Tax Act, 1961 and the*

payment of Stamp Duty on Gift deed is wrongly added to petitioner's total income rather he is regular income tax assessee since more than 15 years and he borne stamp duty out of his previously earned income and learned ITO and CIT has wrongly and illegally made order for addition.

2. *That the Learned AO has wrongly determined the total taxable income at Rs.5,84,510/- instead of total taxable income at Rs.1,97,410/-.*
3. *That the assessee had right to add, delete or modify any ground of appeal during the proceedings.”*
4. Before me, at the outset, Learned AR submitted that due to some problems at the end of the assessee there was no appearance before the AO and CIT(A) and submitted that in the interest of justice the assessee be granted one more opportunity to present her case and he further give an undertaking there would be a proper representation before the authorities from the side of the assessee.
5. Learned DR on the other hand strongly opposed the prayer for a second innings sought by Learned AR. He submitted that there was no appearance before the lower authorities without any possible reason. He therefore submitted that the order of lower authorities be upheld. In the alternate, he submitted that the matter be remitted to CIT(A).
6. I have heard the rival submissions and perused the material available on record. The issue in the present ground is with

respect to the addition of Rs.3,87,100/-. It is an undisputed fact that due to none appearance before the AO, AO had passed an order u/s 144/147 of the Act. Before the CIT(A) also there has been no appearance on behalf of the assessee. Now before me, Learned AR is giving an undertaking that there would be appearance on behalf of the assessee and required documents and details called for by the authorities would be promptly submitted. Considering the aforesaid submissions of the Learned AR, I am of the view that in the interest of justice one more opportunity be granted to the assessee to substantiate her case before the authorities. I therefore restore the issue back to the file of CIT(A) for him to re-adjudicate the issue on merits and in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of my decision to set aside the issue back to the file of CIT(A), the grounds raised on merits are not adjudicated. **Thus the ground of assessee is allowed for statistical purposes.**

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

Order pronounced in the open court on 08.10.2021

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 08.10.2021

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI