

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI “G” BENCH: NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.1687/Del/2017  
[Assessment Year : 2012-13]**

Vijay Gupta, H.No.538, Pipe Line Road, Khasra No.154, Chhoti Pooth (Pooth Khurd), Bawana, Delhi-110039. PAN-AJDPG6741Q	vs	ITO, Ward-34(1), Civic Centre, JLN Marg, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Umesh Takyar, Sr.DR	
<b>Date of Hearing</b>	28.04.2022	
<b>Date of Pronouncement</b>	20.05.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A)-12, New Delhi dated 02.01.2017. The assessee has raised following grounds of appeal:-

1. *“That the Assessing Officer made addition of Rs. 9350014/- on account of alleged short-term capital gain. The said addition is against facts and law.*
  2. *That the addition of Rs. 74,00,000/- has been wrongly and illegally made by the Assessing officer on account of unsecured loans.*
  3. *That the Learned Commissioner of Income Tax appeal has wrongly and illegally confirmed the additions made in the income of the assessee by the Assessing Officer. The additions made deserve to be deleted, and the same may kindly be deleted.”*
2. No one appeared on behalf of the assessee when the appeal was called for hearing. It is seen from the record that since the various dates of hearing, no one has attended the proceedings on behalf of the assessee. Notice sent through

speed post is returned back unserved with remark “*kaafi puch taach k baad patta nahi chala*”. The assessee has not provided any new address to the Registry. Therefore, the appeal is taken up for hearing in the absence of the assessee.

### **FACTS OF THE CASE**

3. Facts giving rise to the present appeal are that in this case, return of income declaring an income of Rs.5,18,781/- after claiming deduction under Chapter VIA to the tune of Rs.30,897/- was filed on 30.03.2013 by the assessee. The same was processed u/s 143(1) of the Income tax Act, 1961 (“the Act”). Subsequently, the case was selected for scrutiny assessment under CASS. Notice u/s 143(2) of the Act dated 08.08.2013 was issued and served upon the assessee. Thereafter, notices u/s 142(1) of the Act, dated 15.07.2014 and 24.09.2014 alongwith questionnaire were issued. Further, a notice u/s 142(1) alongwith questionnaire dated 08.12.2014 was issued and served upon the assessee. In response to the notices issued, assessee alongwith Shri Ganesh Bhardwaj, CA/Ld. AR of the assessee attended the assessment proceedings from time to time. The AO after considering the submissions of the assessee, proceeded to make additions of Rs.93,50,014/- on account of Short Term Capital Gain (“STCG”), Rs.74,00,000/- on account of unexplained unsecured loan and Rs.30,897/- on account of disallowance of deduction claimed u/s 80C & 80D of the Act. Thus, the AO assessed the income at Rs.1,72,99,692/-, against the income of Rs.5,18,781/- declared by the assessee.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions of the assessee, partly allowed the appeal of the assessee. Thereby, Ld.CIT(A) sustained the addition made in respect of

STCG and addition made on account of unexplained unsecured loan. However, the Ld.CIT(A) directed the AO to give the credit on deduction claimed u/s 80C & 80D of the Act upon the production of the supporting evidences.

5. Aggrieved against the order of Ld.CIT(A), the assessee has preferred present appeal before the Tribunal.

6. Ground No.1 raised by the assessee is against the sustaining of addition of Rs.93,50,014/- on account of alleged STCG.

7. Ld.Sr.DR supported the orders of the authorities below. He contended that during the course of assessment proceedings, the AO had noticed regarding sale of property by the assessee i.e. Industrial Plot No.26/1, Block-B, Wazirpur Industrial Area, Wazirpur, Delhi in two parts. It was also noticed that one part was sold on 29.10.2011 to Shri Suresh Chand Goyal and Smt. Jyoti Goyal for a sale consideration of Rs.70,00,000/- and second part was sold on 06.03.2012 to Smt. Preeti Goyal & Smt. Sarla Goyal for Rs.70,00,000/-. Thus, the total sale consideration of entire property was Rs.1,40,00,000/-. The AO therefore, called upon the assessee as to why the stamp value adopted by the Stamp Valuation Authority should not be applied. In respect thereto, the assessee had filed his reply, stating that the property in question was under dispute and fair market value was much below the prevalent circle rate. The explanation of the assessee was not found acceptable to the AO. He therefore, proceeded to compute STCG at Rs.93,50,014/-. Ld. Sr. DR contended that the AO was justified in computing the capital gain as transfer of property was completed and all conditions for taxability of STCG was satisfied. He submitted that the AO has recorded the findings on fact that at the time of sale of property,

the assessee was in clear possession of the property. Ld. Sr. DR further submitted that property in question sold in two parts i.e. one part on 29.10.2011 and another part on 06.03.2012. He contended that one part of the property was purchased on 26.03.2010 and other part on 21.02.2012 from Mohd. Idrees and the total cost of the property was Rs.1,11,49,986/- and as per the circle rate prevalent at that point of time, sale consideration of Rs.1,40,000/- was much lower. He submitted that moreover, there was no justification for not disclosing the capital gain arising out of the transaction.

8. We have heard contention of the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

9.5. *“Ground No. 2 relates to addition of Rs.93,50,014/- on account of undisclosed Short Term Capital Gain. During the course of assessment proceedings, Assessing Officer observed that Assessee had sold a property industrial plot no. 26/1, Block-B, Wazirpur Indul. Area, Wazirpur, Delhi in two parts. One part was sold to Sh. Suresh Chandra Goyal and Smt. Jyoti Goyal on 29.10.2011 for a consideration of Rs.70,00,000/- and second part was sold to Smt. Preeti Goyal and Smt. Sarla Goyal on 06.03.2012 for Rs.70,00,000/-. Therefore, the total sale consideration on account of sale of property was Rs. 1,40,00,000/-. Assessee had purchased one part of this property on 26.03.2010 and second part on 21.02.2012 from Mohd. Idris and the total cost of property was Rs.1,11,49,986/-. Assessing Officer observed that the total value as per the circle rate for the property on the basis of the two sale deeds was Rs.2,05,00,000/- whereas the Assessee has sold the property for a consideration of Rs. 1,40,00,000/-. Assessing Officer further observed that there was no justification to the Assessee for not treating the Short Term Capital*

*Gain and for not applying the provisions u/s 50C. He held that the process of transfer of property was completed and all conditions of Short Term Capital Gain as per Income Tax Act was fulfilled during the year and, therefore, Assessee was liable to pay Short Term Capital Gain tax during A.Y. 2012-13. Assessee had also not challenged the value adopted by the Stamp Valuation Authority. Assessing Officer computed the Short Term Capital Gain of Assessee for A.Y. 2012-13 by applying Section 50C of the Income Tax Act at Rs.93,50,014/-.*

- 9.6. *Assessing Officer has stated in her Remand Report that departmental Valuation Officer has estimated its value at Rs.1,43,18,600/- as against Rs.2,05,00,000/- as per circle rate. It is seen that Appellant had purchased first part of the property on 26.03.2010 and second part was purchased on 21.02.2012 from Mohd. Idrees and the total cost of property is Rs. 1,11,49,986/- whereas Appellant has sold the one part of property on 29.10.2011 and another part on 06.03.2012 for Rs.70,00,000/-. However, Appellant has not shown Short Term Capital Gain. Since Appellant had entered into the transaction of sale which was complete, it was incumbent on him to declare the Short Term Capital Gain during the year. It is apparent that process of transfer of property was completed and Short Term Capital Gain arose in the case of Appellant during A.Y. 2012-13. The claim that matter was disputed is without any basis. Appellant has already sold the one part of property vide sale deed dated 29.10.2011 to Sh. Suresh Chand Goyal and Smt. Jyoti Goyal and the second property on 06.03.2012 to Smt. Preeti Goyal and Smt. Sarla Goyal. It is also seen that Hon'ble Delhi High Court vide its order dated 29.11.2016 has held that Agreement to Sell dated 26.03.2010 is valid. Therefore, stand of Assessing Officer is vindicated. It is also seen that matter was between the partners and Appellant was impleaded as a party later on i.e. on vide order dated 12.02.2015. Therefore, there is no basis in the claim of Appellant.*

9.7 *In fact, Appellant has not disclosed the transactions in its ITR. Even if the matter was disputed, it was Appellant's bounded duty was to reflect the transactions in its ITR neither Appellant has disclosed the transactions during the year it has received the final order. Appellant claims that Short Term Capital Gain falls during A.Y. 2015-16. However, Appellant has not declared the transactions during A.Y. 2015-16. When AR of the Appellant during the course of hearing was asked to state whether the transactions was reflected during A.Y. 2015-16, it has been stated that since there was no capital gain, the transactions was not disclosed.*

9.8 *From perusal of the valuation report, it is seen that Valuation Officer has not taken measurement of the building and report has been prepared only on the Fair Market Value of land. Further, Valuation Officer has taken sale instance of Narela and not of Wazirpur Industrial Area whereas the property is situated. Sale instance of Narela cannot be taken for determining the Fair Market Value of property situated in Wazirpur Industrial Area as it will not give a fair and just estimation of the value of property. Therefore, in my view, valuation report submitted by the Valuation Officer does not give the correct valuation of property. Secondly, Valuation Officer has based his decision on the basis that because of dispute, market value was less. However, it is seen that the time of valuation on 28.12.2015, matter was already resolved. Therefore, there is no basis in the claim of Appellant. Accordingly, disallowance made by Assessing Officer is sustained.”*

9. From the above finding of Ld.CIT(A), it is clear that value assessed by the DVO was not accepted on account of the fact that DVO had adopted the sale instance of Narela which could not be applied to the sale instance at Wazirpur for assessing the fair market value of the property. The assessee has not brought any material rebutting the finding of Ld.CIT(A) on record. The assessee chose not to appear before the Tribunal despite various opportunities were

provided to him. It is incumbent upon the assessee to prove true and correct fair market value of the property. Merely, stating that there was dispute would not be sufficient to accept the value declared by the assessee. The assessee has not furnished any Settlement Deed or award by the Arbitral Award regarding sale consideration of property. Therefore, in the absence of the relevant evidences, the finding of the authorities below remained un rebutted. Thus, Ground No.1 raised by the assessee is dismissed.

10. Ground No.2 raised by the assessee is against the sustaining of addition of Rs.74,00,000/- made on account of unexplained unsecured loan.

11. Ld. Sr. DR supported the orders of the authorities below and submitted that the AO has examined the issue in detail. He drew our attention to the assessment order. He contended that the AO recorded the fact that vide letter dated 24.03.2015, the assessee filed balance confirmation, copy of bank statement and copy of income tax return in respect of loans of Rs.7,00,000/- and Rs.5,00,000/- received from Shri Arun Kumar and Shri Daya Kishan Goyal (HUF). In addition to this, a copy of bank statement of Shri Ram Babu was also filed but no confirmation and copy of income tax return was filed. Therefore, the AO was justified for making the addition in the absence of the requisite details.

12. We have heard contention of the Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. We find that the AO had noticed that various discrepancies in respect of claim of unsecured loans received from the various parties by the assessee. Even before this Tribunal, the assessee has grossly failed to substantiate his claim and negligently did not appear before the Tribunal despite having given various

opportunities. The assessee was required to prove identity of creditors, genuineness of transaction and creditworthiness of creditors. The assessee grossly failed to do so. Therefore, in the absence of the supporting evidences regarding claim of unsecured loans, we do not see any infirmity in the finding of authorities below. Thus, Ground No.2 raised by the assessee is dismissed.

13. Ground No.3 raised by the assessee is general in nature, needs no separate adjudication.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 20<sup>th</sup> May, 2022.

**Sd/-**

**Sd/-**

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

