

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 8388/DEL/2019 (A.Y 2013-14)

Shri Gulshan Malik, T-236, D.B. Gupta Road, Paharganj, New Delhi – 110 055. PAN No. AAFPM8991D (APPELLANT)	Vs.	ACIT, Circle : 63 (1) New Delhi. (RESPONDENT)
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Assessee by :	Shri Aman Garg, Advocate;
Department by:	Md. Gaysuddin Ansari, Sr. D. R.;

Date of Hearing	18.07.2022
Date of Pronouncement	19.07.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2013-14 against the order of the Id. Commissioner of Income Tax (Appeals)-36, New Delhi, dated 06.08.2019.

2. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad in law having been passed ex-parte without giving the assessee an appropriate and adequate opportunity of being heard in clear violation of the principles of natural justice.

3. On the facts and circumstance of the case the order passed by the learned CIT(A) is bad both in the eyes of law and on facts as the same has been passed without giving any finding on the merits of the case.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.1,75,21,408/- made by the AO on account of Long Term Capital gain on sale of residential house property.

5. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of exemption of Rs.1,49,84,143/- claimed by the assessee under section 54 of the Income Tax Act.

(ii) That the disallowance has been confirmed despite the fact that the exemption has been claimed in accordance with the conditions specified under section 54 of the Act.

6. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance Indexed cost of improvement of Rs. 25,37,265/- claimed by the assessee.

(ii) That the disallowance has been confirmed rejecting the explanation and evidences brought on records by the assessee in support of its contention.

7. That the appellant craves leave to add, amend or alter any of

the ground of appeal.

3. Brief facts of the case are that, the return of income was filed by the assessee on 29/03/2014 declaring the income at Rs. 21,11,222/-. The assessee being an individual, derived income from house property, income from profit and gain of business, income under the head of capital gain and income from other sources. The assessment order came to be passed on 21/03/2016 by making addition on account of Section 54 of the Act by disallowing a sum of Rs. 1,75,21,408/- and computed the income of the assessee at Rs. 1,96,32,740/- as against the computation filed by the assessee at Rs. 21,11,330/. As against the assessment order dated 21/03/2016. The assessee has preferred an appeal before the CIT(A). After filing of the appeal before the CIT(A) the assessee has not submitted any kind of documents or details and not appeared on the date of hearing. The Ld.CIT (A) has dismissed the Appeal on 06/08/2019 for non prosecution without adjudicating the Grounds of Appeal raised by the assessee.

4. Aggrieved by the order dated 06/08/2019 the assessee has preferred the present Appeal on the grounds mentioned above. The assessee vide Ground No. 2 has specifically urged on not providing adequate opportunity of being heard which is violation of principle of natural justice.

5. We have heard the Ld. DR and verified the material on record. It is clear from the order of the Ld.CIT (A), that the assessee has not appeared even after giving notice and not produced any documents in support of the Grounds raised thereon. On the other hand, Ld.CIT (A) has dismissed the Appeal for non prosecution but failed to adjudicate the Grounds raised by the assessee and decide the Appeal on merit. In our opinion, approach of the Ld.CIT (A) is erroneous. Therefore, we deem it fit to set aside the order of the Ld.CIT (A) and restore the matter to the file of CIT(A) to decide the Appeal on merit by dealing with the Grounds of Appeal raised before him.

6. In the result, we allow the Ground No. 2 of the assessee for statistical purpose with a direction to the CIT(A) to decide the matter on merit and also direct the assessee to cooperate with the appellate proceedings.

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

Order pronounced in the open court on 19th July, 2022

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated : 19/07/2022

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

R.N

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI