

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3299/Del/2019
(Assessment Year: 2015-16)

Kamal Kapur, 124, Hans Bhawan-1, Bahadur Shah Zafar Marg, New Delhi (Appellant) PAN: AAAPK9335L	Vs.	ACIT, Circle-63(1), New Delhi (Respondent)
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Assessee by :	Shri K. Sampath, Sr. Adv Shri V. Rajkumar, Adv
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Revenue by:	Ms. Yamini, Sr. DR
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Date of Hearing	30/11/2022
Date of pronouncement	09/01/2023

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. Heard and perused the record.
2. The assessee is appeal against the order of the Id CIT(A)-20, New Delhi dated 19.02.2019 for Assessment Year 2015-16, wherein, the appeal of the assessee was partly allowed.
3. It was pointed out by the Id AR that primarily that there has been error in the order of the Id CIT(A) and material discrepancy of facts was pointed out, which Id CIT(A) has not taken into consideration and passed the impugned order.
4. It can be appreciated that during the relevant AY, the assessee has declared long term capital gain of Rs. 9,18,880/- in the original return and the details of the long term capital gain were enclosed. However, after realizing certain mistake the assessee had filed revised return declaring income of Rs. 63,30,610/- and long term capital gain of Rs. 23,57,880/-. There was a typographical mistake in the computation

of LTCG on debentures of Deutsche Investments India Pvt. Ltd attached with the revised return in as much as the cost of acquisition was taken at Rs. 1,01,000/- as against the correct sum of Rs. 10,10,000/- and fresh calculation of capital gain and computation of income was enclosed with the submissions made before LD. CIT(A). The Id CIT(A) however, has failed to take into consideration the aforesaid fresh calculation of capital gains and decided the issue against the assessee with following findings in para 6.2.3:-

"6.2.3 The appellant had claimed long term capital gain of Rs. 23,57,880/- in the 'Return of Income' whereas before the undersigned he claimed the long term capital gains to be Rs. 5,30,000/-. Form the details submitted by the appellant it might have been the fact that the appellant had sold the NCD of Deutsche Investment India Pvt Ltd. For Rs. 15,40,000/ on 20.08.2014 which he might have purchased on 20.05.2011 for Rs. 10,10,000/-. The Assessing , Officer is directed to verify the transaction and if found true give credit for long term capital gain for Rs. 5,30,000/-. Since the appellant could not submit any details regarding the rest of the / LTCG claimed by him, the Assessing Officer is directed to treat the balance as STCG."*

5. The bench is of considered opinion that Ld. CIT(A) having co-terminus powers was supposed to take into cognizance the correct facts and submission and give findings on the same. Instead on some assumptions directed Ld. AO to verify the claim. Thus without going into the merits of the ground as raised, there is apparent error in the impugned order of the Id CIT(A), as it failed to take into consideration the aforesaid submission though reproduced at para 5(4) at page No. 8, of the impugned order of the Id CIT(A) and to proceed to decide on those.

6. Consequently, the appeal of the assessee is allowed for statistical purposes. The issue is restored to the files of the Id CIT(A) to pass a fresh order in the light of the aforesaid observations.

Order pronounced in the open court on 09/01/2023.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 09/01/2023

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi