

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND

ITA No. 4383/DEL/2018 [A.Y. 2008-09]

Smt. LATA VIG
G-15, Sector - 12,
Gautam Budh Nagar
Noida

Vs.

Income Tax Officer,
Ward - 2(1)
New Delhi

PAN: AANPA 0314 N

(Applicant)

(Respondent)

Assessee By : Ms. Vandna Gopal Sharda, CA

Department By : Shri Hemant Gupta, Sr. DR

Date of Hearing : 23.01.2023

Date of Pronouncement : 23.01.2023

ORDER

This appeal by the assessee is preferred against the order of the
ld. CIT(A)-1, Noida dated 30.11.2017 pertaining to Assessment Year
2008-09.

2. The solitary grievance of the assessee reads as under:

“1. The order of the Hon'ble Commissioner of Income Tax (Appeals) -18, New Delhi confirming the order of Learned Assessing Officer is bad in law and on facts and against the principals of natural justice and must be quashed.

2. REVISED: That the Hon'ble Commissioner of Income Tax (Appeals) has grossly erred in re-assessing the additions of Rs. 15,00,000/- (Rupees Fifteen Lakh Only) as the Income From Other Sources against the additions of Rs. 17,07,303/- (Rupees Seventeen Lakh Seven Thousand Three Hundred and Three Only) on account of Long Term Capital Gains by the Ld. Assessing Officer, in the hands of the assessee without considering the facts of the case. These illegal addition made by the Ld. AO and wrongly confirmed by the Ld. CIT(A) needs to be deleted and orders passed needs to be quashed.

3. The assessee craves leave to add / alter any of the grounds of appeal on or before the date of final hearing.

The following ground of Appeal may kindly be added-

4. That the Ld. Income Tax Officer has grossly erred on facts and in law in passing an order dated 10.03.2016 thereby making a wrong assessment in hands of the assessee treating that sale of plot is being made by the assessee Lata Vig whereas the assessee has already sold the Plot in the year 2003 vide registered documents and the said buyer has re-sold the said plot in the year 2007. Such an order passed on the basis of wrong information and without application of mind must to be quashed.”

3. The representatives of both the sides were heard at length, the case records carefully perused and the documentary evidences brought on record duly considered in light of Rule 18(6) of ITAT Rules.

4. Briefly stated, the facts of the case are that the Assessing Officer was in possession of information that the assessee has sold Plot No. 201 of 380.85 sq. mtr for Rs. 17 lakhs on 14.05.2007. Based on the above information, the assessee was asked to explain the transaction.

5. The appellant's husband attended the proceedings and explained to the Assessing Officer that no such property was in his wife's name and she has not entered into any such transaction as mentioned in the information.

6. The Assessing Officer issued notice u/s 148 of the Act but the assessee did not respond to the said notice and the Assessing Officer was left with no choice but to make addition of Rs. 17,07,303/- being sale consideration/stamp duty value of the impugned property.

7. Before me, the ld. counsel for the assessee vehemently stated that the assessee was allotted a plot by the Noida authority on 12.09.2003 and by way of General Power of Attorney the assessee sold

the plot after paying installment money of Rs. 30,000/- to Shri Sanjay Chauhan and information received by the Assessing Officer is for sale made by Shri Sanjay Chauhan subsequently, as is evident from the transfer deed dated 14.05.2007.

8. It is the say of the ld. counsel for the assessee that since the assessee did not sell the impugned property on the alleged date, therefore, the information received by the Assessing Officer was incorrect and the assessee cannot be penalized for the transaction done by Shri Sanjay Chauhan.

9. Per contra, the ld. DR vehemently stated that the alleged agreement to sell is dated 20.11.2003 and pointed out that this agreement to sell was not with Shri Sanjay Chauhan but with some other person whereas in 2007, Shri Sanjay Chauhan has sold the property through General Power of Attorney.

10. The ld. DR further pointed out that out of two instruments executed on 20.11.2003 by the assessee, general power of attorney remained in force till 14.05.2007 while agreement to sell became

ineffective as soon as General Power of Attorney is given to Shri Sanjay Chauhan.

11. In her rebuttal, the ld. counsel for the assessee stated that consideration mentioned in the registered instrument was never received by the assessee and there is no evidence brought on record by the Assessing Officer regarding the recipient of the sale consideration.

11. I have given thoughtful consideration to the orders of the authorities below and have carefully perused the documents brought to my notice. There is no dispute that the agreement to sell dated 20.11.2003, which is heavily relied upon by the assessee/ld. counsel for the assessee was between the assessee and one Shri Nepal Singh, whereas the agreement to sell dated 14.05.2007, which is heavily relied upon by the assessee to show that she was not the owner was one Shri Sanjay Chauhan.

12. These confusing facts have neither been properly examined by the Assessing Officer nor by the first appellate authority. The claim of the assessee /ld. counsel for the assessee that the assessee never

received sale consideration alleged in the information has not been verified by the Assessing Officer at all.

13. The contention of the ld. counsel for the assessee that the Assessing Officer should have at least examined Shri Sanjay Chauhan and Shri Nepal Singh cannot be brushed aside lightly. In fact, the ld. counsel for the assessee assured the bench to furnish latest address of both the persons.

14. In the interest of justice and fair play, I deem it fit to restore the quarrel to the file of the Assessing Officer. The assessee is directed to furnish the latest address of Shri Sanjay Chauhan and Shri Nepal Singh and also furnish an affidavit that she does not have any other bank account other than disclosed to the department and the Assessing Officer is directed to examine Shri Sanjay Chauhan/Shri Nepal Singh and make necessary enquiries from the bank in respect of payee of the draft purchased from the bank, as per the information, after affording adequate opportunity of being heard to the assessee.

15. In the result, the appeal of the assessee in ITA No. 4383/DEL/2018 is treated as allowed for statistical purposes.

The order is pronounced in the open court on 23.01.2023.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 23rd January, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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Date of dispatch of the Order	