

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.610/Del/2022
Assessment Year: 2019-20

Vinod Kumar Jain 23, EC Road Back, Gate Dehradun -248001 PAN No.ADQPJ5093F (APPELLANT)	Vs	DCIT Circle -1 (1) (1) Intt. Taxation Delhi (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Sanjay Kumar, Sr. dR

Date of hearing:	07/02/2023
Date of Pronouncement:	07/02/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-42, Delhi dated 03.01.2022 pertaining to A.Y.2019-20.

2. The grievance of the assessee read as under :-

1. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in confirming the following actions of the ADIT, CPC Bengaluru:-*
 - i. *refusing to rectify errors apparent on record;*

ii. determining taxable income at Rs.1,77,06,680/- against the returned income in a sum of Rs.88,70,680/- in violation of natural justice, equity and fairness;

iii. making addition of Rs.88,36,000/- on account of long term capital gains without any valid grounds and cogent material;

3. None appeared on behalf of the assessee inspite of repetitive notices sent through RPAD but returned back. We decided to proceed exparte. The DR was heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that the returned income of the assessee was processed vide intimation u/s. 143 (1) of the Act dated 15.07.2020 at Rs.1,77,06,680/- against Rs.88,70,680/-.

5. The assessee moved an application for rectification u/s. 154 of the Act which was dismissed by the CPC, Bangluru.

6. The assessee preferred appeal before the CIT(A) before whom he vehemently contended that the assessee disclosed following income in his returned of income :-

S. No	Nature of Income	Amount In Rs...
1	Income From Capital Gains (Long Term Capital Gain on the sale of Ancestral House Property jointly held with his brother)	88,36,000/-
2	Income From Other Sources	34,680/-
	Total In Rs....	88,70,680/-

7. It was explained that the impugned house property was an ancestral house property jointly owned by his brother who has also declared capital gain in his return of income. In support the assessee filed a valuation report justifying the fair market value as on 01.04.2001. The capital gain from the sale of impugned property was shown at 50% of the total consideration as the other 50% belonged to his brother Santosh Jain. The CIT(A) dismissed the appeal of the assessee on 2 counts firstly the assessee could not produce any evidences to show that the property was acquired before 01.04.2001 and secondly the assessee could not adduce any evidences in respect of joint ownership of the property.

8. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee did file valuers report dated 25.07.2018 in support of fair market value as on 01.04.2001. The said report must contain the details

of the impugned property. Though the assessee has returned only 50% of the total consideration the balance 50% needs to be verified. Therefore, in the interest of justice and fair play we restore this issue to the files of the AO. The assessee is directed to avail this opportunity and furnish both the details namely the evidence in support of the claim that the property was acquired prior to 01.04.2001 and secondly the details of co- ownership and the return of this brother Santosh Jain. The AO is directed to examine the same and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

10. Decision announced in the open court on 07.02.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: .02.2023

Neha

Copy forwarded to:

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

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi