

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'F', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 150/Del/2020 : Asstt. Year : 2014-15

Pawanjeet Kaur, IPSO Lega, H-35, 1 st Floor, Jangpura Extension, New Dehi-110014	Vs	ACIT, Circle-49(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. CJUPK3595E		

**Assessee by : Sh. Rajeev Saxena, Adv.
Sh. Shyam Sunder, Adv.
Revenue by : Sh. K. K. Mishra, Sr. DR**

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-35, New Delhi dated 01.11.2019.

2. Following grounds have been raised by the assessee:

"1. That the order of the Id. CIT(A) is unsustainable in law as Section 45 of the Income Tax Act, 1961 is inapplicable in the facts and circumstances of the present case.

2. That the Id. CIT(A) has erred in law and in facts in arriving at a finding that appreciation in money is chargeable as there is neither a "transfer" nor a "capital asset" involved on receipt of an advance and its subsequent return.

3. In this case, notice of hearing has been issued by the Id. CIT(A) on 17.12.2018. None attended. Notice has been issued again on 01.08.2019 for which the assessee sought adjournment and the case was adjourned to 05.09.2019. On 05.09.2019, the assessee sought adjournment and the case was posted for hearing on 16.10.2019.

4. The Id. CIT(A) passed order on 01.11.2019 holding that the assessee did not make any submission or comply to the notices sent from time to time.

5. After going through the facts of the present case, it is seen that there are lots of discussion on purchase of property or forfeiting the amount but assessing officer has recorded that relevant documents was not filed and in absence of sale purchase deed the claim of the assessee remains unverified. There is no discussion on the construction of the house as was claimed before the Tribunal. Ld CIT(A) did not grant opportunity to the appellant despite the request for the adjournment has been filed and it was informed that the date granted i.e. 16.10.2019 the assessee would not be available. The specific ground no 2 is raised before us on the violation of the principles of the natural justice. In our opinion the assessing officer has to examine all the facts whether the assessee has purchased or constructed any property and utilized the amount within the three years period allowable for taxability of the amount not so utilized and capital gain there upon would arise as per the provisions in the previous year in which period of three years from the date of transfer of the original asset expires. The Assessing Officer may also examine the facts of the year after

the expiry of three years in accordance with the provisions of the Income Tax Act.

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

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR