

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

[THROUGH VIDEO CONFERENCING]

ITA No.22/DDN/2020

[Assessment Year : 2015-16]

Meenakshi Kumar, C/o-Matta Garg & Co., 15, Astley Hall, Dehradun, Uttarakhand-248001. PAN-AGIPK3345G	vs	Pr.CIT, Dehradun.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri N.S.Jangpangi, CIT DR	
Date of Hearing	27.07.2023	
Date of Pronouncement	27.07.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld.Pr. CIT-1, Dehradun dated 09.03.2020.

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

1. *“The learned Principal Commissioner of Income Tax , Dehradun has passed the order without affording opportunity of being heard to the appellant.*
2. *The learned Principal Commissioner of Income Tax, Dehradun has erred in passing order u/s 263 of the Income Tax Act, 1961.*
3. *The order passed is arbitrary, against the provisions of law and facts of the case.*
4. *Any other ground arising at the time of or before hearing of appeal.”*

3. At the time of hearing, no one appeared on behalf of the assessee. Therefore, the appeal is taken up for hearing and is being disposed off *ex-parte* to the assessee on the basis of material available on record.

4. The present appeal filed by the assessee is time barred by 52 days. The assessee has filed an application dated 30.06.2020 seeking condonation of delay. The appeal was required to be filed on or before 09.05.2020 as the impugned order was received on 10.03.2020. The spouse of the assessee was suffering from cancer and there was widespread expansion of Covid-19 pandemic and lockdown position in the country, during the relevant time. Hence, the assessee was prevented by reasonable cause for not filing the appeal in time.

5. Per contra, Ld. Sr. DR opposed these submissions and submitted that there is no reasonable cause for condonation of delay. Therefore, the appeal filed by the assessee deserves to be dismissed on account of time barred by 52 days.

6. We have heard the submissions of the parties and perused the material placed on record. Considering the fact that there has been wide spread of Covid-19 pandemic like lockdown situation during that period, therefore, taking a liberal view, the delay in filing the appeal is hereby, condoned and the appeal is admitted for hearing.

7. Facts giving rise to the present appeal are that the assessee e-filed his return of income on 03.02.2016 declaring total income of INR 2,44,310/-. The case was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act") accepting the return of income declared by the assessee of INR 2,44,310/-. Subsequently,

the case was selected for limited scrutiny. The Assessing Officer after providing opportunity to the assessee and discussing the case with him, accepted the declared income of the assessee. Thereafter, on examination of the assessment order and case records, Ld. Pr. CIT noticed that the assessee had sold residential plots at INR 66,30,550/- and also purchased residential plot of INR 45,00,000/- on which stamp duty was paid at INR 3,05,000/- and registration fee at INR 10,000/-, totaling to INR 48,15,000/-. He noticed that the assessee claimed deduction u/s 54 of the Act at INR 52,05,000/- and declared Long Term Capital Gain at NIL. Ld. Pr. CIT proceeded to set aside the assessment and directed the AO to re-examine the claim of exemption u/s 54 of the Act on the ground that the deduction so allowed, is not in accordance with law.

8. Aggrieved against the order of Ld. Pr. CIT, the assessee is in appeal before this Tribunal.

9. No one attended the hearing on behalf of the assessee. Ld. Sr. DR supported the impugned order however, he fairly agreed that only one opportunity was given to the assessee.

10. We have heard Ld. Sr. DR and perused the material available on record. We find that the assessee had taken a specific ground regarding not providing adequate opportunity of being heard to him. We find merit into the contention of the assessee as from the impugned order. It is clear that Ld.Pr.CIT proceeded to issue a show-cause notice dated 29.01.2020 u/s 263 of the Act thereby, calling upon the assessee for compliance on 18.02.2020. For the sake of clarity, the relevant contents of the impugned order are reproduced as under:-

3.0. *“In view of the above facts and circumstances, the assessment order u/s 143(3) of the Income Tax Act, 1961 dated 03.07.2017 passed by the AO in the case for the A.Y. 2015-16 is found to be erroneous and also prejudicial to the interest of revenue. Thus, a show cause notice dated 29.01.2020 was issued to the assessee for her submission on the above issues. The date of compliance was fixed on 18.02.2020. But on the date fixed no one attended nor any adjournment was sought by the assessee. In view of the non-compliance on the part of the assessee it is assumed that she has nothing to say on the points raised in the show cause notice.*

2.1 *In view of the above, I hold that the case of the assessee is squarely covered under clause (a) & (b) of the Explanation (2) of Section 263(1) as the order was passed by allowing deduction u/s 54 of the Income Tax Act, 1961 to the assessee which is not in accordance with law. The assessment order 143(3) dated 03.07.2017 is therefore, set aside with the direction to AO to re-examine the claim of deduction u/s 54 of the Income Tax Act, 1961 and pass the assessment order afresh accordingly, after affording adequate opportunity to the assessee.”*

11. From the above, it is clear that a solitary opportunity was given to the assessee which in our considered view, is clearly contrary to mandate of law. For the sake of clarity, section 263 of the Act is reproduced as under:-

Revision of orders prejudicial to revenue.

263. (1) *The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify,*

including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be

erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”

12. From the above provision, it is clear that Ld. Pr. CIT is required to give assessee an opportunity of hearing. Hence, to sub-serve the principle of natural justice, we hereby, set aside the impugned order and restore the issue to the file of Ld. Pr. CIT to decide it afresh after giving adequate opportunity of being heard

to the assessee. Grounds raised by the assessee are thus, allowed for statistical purposes.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27th July, 2023.

Sd/-

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT