

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.1358/Del/2019
[Assessment Year : 2010-11]**

Anil Kumar Kansal, C/o-Akhilesh Kumar, Adv., 206-207, Ansal Satyam, Ghaziabad, Uttar Pradesh-201002. PAN-ADIPK0246R	vs	ITO, Ward-1(1), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Shri Om Parkash, Sr.DR	
Date of Hearing	17.08.2023	
Date of Pronouncement	23.08.2023	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), Ghaziabad dated 30.11.2018 for the assessment year 2010-11. The assessee has raised following grounds of appeal:-

1. *"Because, the order of learned lower authority is bad in law & against the facts and circumstances in sustaining the validity of jurisdictional notice and order.*
2. *Because, Id. CIT(A), erred in law in sustaining the validity of the notice u/s 148, even in the absence of issuance of any valid notice in terms of S. 149 of the Act, being issued to non-existing address/wrong name.*
3. *Because, Id. CIT(A), further erred in not appreciating that assessment is framed without serving any notice u/s 148 despite challenge during assessment proceedings, against the ratio of jurisdictional high court in case of Dr. Ajay Prakash etc. with wrong observations about challenging service etc.*

4. *Because, Id. C.I.T (Appeals) has further erred in not appreciating that reasons are vague/wrong and notice is issued without any application of mind and satisfaction of AO/approving authority and hence the same is beyond jurisdiction.*
5. *Because, Id. CIT(A) further failed to appreciate that reasons are not supplied within the period of limitation which is against the settled law.*
6. *Because, without prejudice to above and in alternative, Id. CIT (A) erred in sustaining the addition on merits without allowing claim of cost incurred and rejecting valuation report.*
7. *Therefore, it is prayed that notice/order under question may kindly be quashed, however only as an alternative it is prayed that addition may be quashed.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that no one has been attending the proceedings on behalf of the assessee for a pretty long time. The present appeal was instituted on 19.02.2019. There was a representation on behalf of the assessee on 15.10.2019 and 09.01.2020. Thereafter, on 17.08.2021, Ms. Ishita Gutpa, CA appeared the proceedings on behalf of the assessee. Then, again on 20.07.2022, Shri Akhilesh Kumar & Shri Vipin Garg, Advocates, attended the proceedings on behalf of the assessee and requested for withdrawal of Power of Attorney (“PoA”). Fresh notice was issued to the assessee but there was no appearance on behalf of the assessee. Notice was also sent through the office of Ld. DR as per the report of the ITO, Ward-2(1), Ghaziabad, it is stated that Income Tax Inspector was deputed for service of the notice. He reported that on the given address, the assessee was not found to be residing thereafter, the Inspector tried to contact relatives of the assessee

who also did not give any current address of the assessee to the Registry. In the absence of such address and notices sent on the address given in Form No.36 have been returned back by the Postal Authority. Under these facts, it is presumed that the assessee is not interested to prosecute the present appeal. Therefore, the appeal called for hearing *ex-parte* to the assessee and being decided on the basis of the material available on record.

3. Facts giving rise to the present appeal are that the Assessing Officer ("AO") was having Annual Information Return ("AIR") for sale of property at INR 95,00,000/-, a verification letter dated 09.01.2017 was issued to the assessee. It is further recorded by the AO that no income tax return was filed by the assessee. Therefore, the assessment was re-opened on the ground that the assessee failed to disclose capital gain in respect of sale of this property. In response to the notice issued u/s 148 of the Income Tax Act, 1961 ("the Act"), return of income was filed by the assessee, declaring income of INR 1,44,631/-. Ld. Authorized Representative ("AR") of the assessee attended the proceedings and submitted the details. During the assessment proceedings, the AO declined to accept long term capital loss as the assessee could not produce the evidences in support of cost of acquisition. The AO noticed that brother of the assessee is being the co-owner of property, had stated that the half share of the property was purchased by Shri Sunil Kumar Kansal of INR 5,57,500/- + stamp duty of INR 80,840 on 26.07.1993. Therefore, the AO on that basis allowed indexed cost of acquisition amounting to INR 16,53,405/- against the cost of acquisition claimed by the assessee at

INR 50,93,673/-. Thus, the AO assessed Long Term Capital Gain ("LTCG") at INR 30,96,595/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. Ld. Sr. DR opposed the grounds of appeal, submissions of the assessee and supported the orders of the authorities below. Apropos to grounds of appeal, Ld. Sr. DR submitted that the grounds are factually incorrect. The assessee has not placed any material to support his contention. Therefore, he submitted that the grounds deserve to be dismissed. He submitted that the assessee grossly failed to prove cost of acquisition and cost of improvement. Therefore, in the absence of credible supporting evidence, AO was justified for computing the impugned capital gain.

7. I have heard Ld. Sr. DR of the Revenue and perused the material available on record and gone through the orders of the authorities below. In the Paper Book, the assessee has enclosed the submissions made before Ld.CIT(A). The Ld.CIT(A) after considering the submissions of the assessee, has decided the issue by observing as under:-

5.2. *“Ground nos. 2 to 4 and 6: The appellant has challenged the order contending that proper opportunity of being heard was not given to the appellant and there is no valid service of notice u/s 148.*

According to the appellant reason to believe have not been supplied to the appellant thus according to him the proceedings u/s 148 are not valid.

5.2.1. Examination of facts reveals that the appellant attended the proceedings through AR and also filed return in response to the notice u/s 148 without challenging the proceedings. The assessee having filed the return in response to notice u/s 148 and also actively participated in the proceedings thereafter, by its conduct, abandoned the right to claim non service of notice u/s 148 thus the irregularity, if at all, got cured by subsequent conduct of the assessee. Reliance is placed on Yogesh Kumar & Sons (HUF) vs AO (ITAT, Asr) 115 TTJ 696, CIT vs Three Dee Exim Pvt. Ltd. 2011-TIOL-196-HC-DEL-IT and Thistle Properties (P) Ltd. vs ACIT (ITAT, Mum) 134 ITD 6 in this regard. During the course of appellate proceedings appellant failed to substantiate applicability of case laws relied upon by him. Keeping in view above facts the contention of the appellant that proceedings are invalid and alleged denial of natural justice does not hold good. Accordingly these grounds of appeal are dismissed.

5.3 Ground no. 5: The appellant has challenged the addition of Rs. 30,96,594/- contending that the assessment is erroneous as benefit of cost of construction claimed by the appellant has not been given by the AO while computing the long term capital gain. Examination of facts reveals that appellant sold a property of Rs. 95,00,000/- as per provisions of section 50C, jointly with his brother, and information about the same was received by AO. No ITR was filed by the appellant prior to issuance of notice u/s 148, 142(1) by the AO. The appellant filed ITR declaring an income of Rs. 1,44,631/- and long term capital loss by claiming cost of improvement, in addition of cost of acquisition of the property. However, appellant failed to substantiate the cost of improvement claimed by him in accordance with the provisions of section 48 i.e. incurrance of capital

expenditure wholly and exclusively for the above said property at the specified time. Thus there is no aberration in the action of the AO making the above said addition. Keeping in view above facts this ground of appeal cannot be sustained accordingly dismissed.”

8. The finding of Ld.CIT(A) is not controverted by the assessee by placing any contrary material on record. It is incumbent upon the assessee to prove his cost of acquisition and cost of improvement by furnishing credible supporting evidences. In the absence of such evidence, claim of the assessee could not be allowed. Hence, the AO would be justified for declining the claim of the indexation based upon such imaginary cost of acquisition and cost of improvement. Therefore, in the absence of any contrary material, I do not see any reason to interfere the findings of Ld.CIT(A), the same is hereby affirmed. Grounds raised by the assessee are thus, dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 23rd August, 2023.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI