

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ASTHA CHANDRA JUDICIAL MEMBER**

ITA No.5184/Del/2019
Assessment Year: 2009-10

Shri Vijay Kumar Ghelani 1516, Kashmere Gate, New Delhi PAN No.AAGPG5572K (APPELLANT)	Vs	ITO Ward- 47 (1) New Delhi (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	18/09/2023
Date of Pronouncement:	18/09/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-16, New Delhi dated 19.03.2019 pertaining to A.Y.2009-10.

2. The grievance of the assessee read as under :

“1. That on the facts and the circumstances of the case, the Ld. CIT(A)-16, New Delhi has erred in confirming the penalty of Rs.15,52,470/- levied by the AO u/s. 271 (1)(c) of the IT Act in an arbitrary, uncalled for and illegal manner and as such the same is liable to be quashed.

2. *Without prejudice to our above ground, that the Ld. CIT(A)-16, New Delhi, has not given the effect of quantum appeal decided in favour of the Appellant and as such it is prayed that suitable directions may please be issued to the Lower Authorities to give the appeal effect and reduce the penalty to Rs.66,77,800/-*

3. This appeal was first listed for hearing on 15.06.2022 and after that on several occasions the appeal was listed for hearing as per order sheet entries with notice to the assessee. The assessee chose not to attend, therefore, we decided to proceed exparte.

4. The quarrel revolves around the fact that an addition of Rs.46.46 lacs was made by the AO on account of short term capital gains earned by the assessee on sale of immovable property. The addition was made on the basis of the AIR information regarding sale of property. On verification the AO came to know that the assessee has sold property at Rs. 80 lacs when the circle rate was 10756000/- . Adopting the circle rate the AO computed capital gains.

5. The assessment was challenged before the CIT(A) who directed the AO to compute the capital gains adopting Rs.80 lacs as a sale proceed. The AO levied the penalty.

6. On a thoughtful consideration to the factual matrix discussed here in above in the light of ground No.2 of the appeal we are of the considered view that the AO should have levied penalty after giving relief to the assessee as directed by the CIT(A) in respect of the sale consideration to be taken at Rs. 80 lacs

instead of circle rate of Rs.10756000/-, therefore, we direct the AO to re-compute the penalty by adopting the sale proceeds at Rs. 80 alcs. With these directions the appeal is partly allowed.

7. Decision announced in the open court on 18.09.2023.

Sd/-

[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .09.2023

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